TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 285.

EDGAR A. LEVY LEASING COMPANY, INC., PLAINTIFF IN ERROR,

vs.

JEROME SIEGEL

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED APRIL 7, 1921.

(28,210)

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 13, 1921.

a Court of Appeals of the State of New York.

EDGAR A. LEVY LEASING CO. INC., Plaintiff-Appellant,

against

JEROME SIEGEL, Defendant-Respondent.

Papers on Appeal.

M. S. & I. S. Isaacs, Attorneys for Plaintiff-Appellant, 52 William Street, Borough of Manhattan, New York City.

Rose & Paskus, Attorneys for Defendant-Respondent, 128 Broadway, Borough of Manhattan, New York City.

Charles D. Newton, Attorney General, State of New York, 51 Chambers Street, Borough of Manhattan, New York City.

STATE OF NEW YORK, *ss:*

b Court of Appeals.

Pleas in the Court of Appeals, held at the Court of Appeals Hall, in the City of Albany, on the 8th day of March in the year of Our Lord One Thousand Nine Hundred and Twenty One, before the Judges of said Court.

Witness, the Hon. Frank H. Hiscock, Chief Judge, presiding.

R. M. BARBER,
Clerk.

Remittitur March 9th, 1921.

c EDGAR A. LEVY LEASING CO., INC., Appellant,

agst.

JEROME SIEGEL, Respondent.

Be it remembered, That on the 5th day of January, in the year of our Lord one thousand nine hundred and twenty one, Edgar A. Levy Leasing Co., Inc., the appellant in this cause, came here into the Court of Appeals, by M. S. & I. S. Isaacs, its attorneys, and filed in the said Court a notice of appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Jerome Siegel, the respondent in said cause, afterwards appeared in said Court of Appeals by Rose & Paskus his attorneys.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

d Whereupon the said Court of Appeals having heard this cause argued by Messrs. Louis Marshall, Francis M. Scott and Lewis M. Isaacs of counsel for the appellant and Messrs. William

D. Guthrie and Julius Henry Cohen of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be, and the same hereby is affirmed with costs in opinion of Pound, J. in Peo. ex rel. Durham Realty Corp. vs. La Fetra and Peo. ex rel. Brixton Operating Corp. vs. La Fetra, decided herewith, and the questions certified answered as follows: Nos. 1, 4, 5, 6, & 7 in the negative; Nos. 2 & 3 in the affirmative. And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Appellate Division of the Supreme Court there to be proceeded upon according to law.

Therefore, It is considered that the said order be affirmed with costs on opinion of Pound, J. in Peo. ex rel. Durham Realty Corp. vs. La Fetra &c., &c., as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Appellate Division, First Judicial Department before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Appellate Division before the Justices thereof, &c.

R. M. BARBER,
Clerk of the Court of Appeals of the State of New York.

Court of Appeals, Clerk's Office,

Albany, March 9, 1921.

I Hereby Certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

R. M. BARBER,
Clerk of the Court of Appeals of the State of New York.

1 Supreme Court, New York County.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

Statement under Rule 41.

The summons and complaint were served on the defendant on October 8, 1920.

The answer of the defendant to the complaint was served on November 15, 1920.

The name of the original plaintiff is Edgar A. Levy Leaving Co. Inc.

The name of the original defendant is Jerome Siegel.

Plaintiff's attorneys are M. S. & I. S. Isaacs.

Defendant's attorneys are Rose & Paskus.

There has been no change of parties or attorneys.

2 *Notice of Appeal Read on Behalf of Appellant.*

Supreme Court, New York County.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

SIRS:

Take notice that the plaintiff in the above entitled action hereby appeals to the Appellate Division of the Supreme Court, First Judicial Department, from the order of this court, made herein, dated and entered in the office of the Clerk of New York County the 20th day of November, 1920, denying the motion of said plaintiff for judgment upon the pleadings and from each and every part of said order.

Dated, New York, November 26, 1920.

Yours, &c., M. S. & I. S. ISAACS,
Attorneys for Plaintiff.

Office & Post Office Address, No. 52 William Street, Borough of Manhattan, City of New York.

To:

Messrs. Rose & Paskus, Attorneys for Defendant, 128 Broadway, Borough of Manhattan, City of New York.

Charles D. Newton, Esq., Attorney General, State of New York.

William F. Schneider, Esq., Clerk of the County of New York.

3 *Order Appealed from.*

The Supreme Court, County of New York, Special Term, Part V.

Index Number 30864; Year 1920

Present: Hon. Robert F. Wagner, Justice.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

Order of the Court determining motion with a recital of the papers read on either side.

	Papers numbered.
Notice of Motion	1
Complaint	2
Answer	3

Upon the foregoing papers and after hearing counsel this motion for judgment on the pleadings is denied for the reasons stated in Ullman Realty Company vs. Kintara Tamur, decided herewith.

Enter.

R. F. W.,
J. S. C.

Dated November 26th, 1920.

4 *Notice of Motion Read on Behalf of Appellant.*

New York Supreme Court, New York County.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

Take notice that upon the complaint herein and the answer thereto, the plaintiff will move this Court at a Special Term, Part III thereof, to be held at the New York County Court House in the Borough of Manhattan, City of New York, on the 22nd day of November, 1920, at 10:15 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for judgment on the pleadings herein, pursuant to Section 547 of the Code of Civil Procedure, and for such other and further relief in the premises as may be just together with costs and disbursements of the action.

This motion is based on the ground that the answer herein does not set up any defense to the complaint herein and that the First and Second alleged affirmative defenses are based on the theory that Chapter 944 of the Session Laws of the State of New York for the year 1920 constitutes legal authority for the interposition of such defenses. The plaintiff contends that the act referred to is unconstitutional and void in that it deprives the plaintiff of its prop-
5 erty without due process of law, in violation of Article I, Section 6, of the Constitution of the State of New York and of Section 1 of Article XIV of the Amendments to the Constitution of the United States, in that it constitutes a taking of the private property belonging to the plaintiff for private use without just compensation, in violation of Article I, Section 6, of the Constitution of the State of New York, in that it denies to the plaintiff the equal protection of the laws, in violation of Section 1 of Article XIV of the Amendments to the Constitution of the United States, and in that it further impairs the obligation of a contract between the plaintiff and

the defendant, in violation of Article I, Section 10, of the Constitution of the United States.

Dated, New York, November 17, 1920.

Yours, &c.,

M. S. & I. S. ISAACS,
Attorneys for Plaintiff.

Office and Post Office Address, No. 52 William Street, Borough of Manhattan, New York City.

To: Rose & Paskus, Esqs., Attorneys for Defendant, No. 128 Broadway, Borough of Manhattan, New York City.

To: Hon. Charles D. Newton, Attorney General of the State of New York.

6 *Summons Read on Behalf of Appellant.*

Supreme Court, State of New York.

(Trial Desired in New York County.)

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, October 8th, 1920.

M. S. & I. S. ISAACS,
Plaintiff's Attorneys.

Office and Post Office Address, No. 52 William St., Boro. of Man., N. Y.

7 *Complaint Read on Behalf of Appellant.*

Supreme Court, State of New York.

(Trial Desired in New York County.)

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

Plaintiff, above named, complaining of the defendant, alleges on information and belief:

1st. That at all the times hereinafter mentioned, plaintiff was and still is a domestic corporation organized and existing under and by virtue of the laws of the State of New York.

2nd. That in the City of New York, on or about the 26th day of June, 1918, by an instrument in writing dated on or about that date, plaintiff let and rented to defendant, and defendant hired and took from plaintiff the apartment designated in said instrument as Apartment D on the 10th floor in premises 157 West 57th Street, in the Borough of Manhattan, City of New York, for the term of two years commencing October 1st, 1918, at an annual rental of One Thousand Four Hundred and Fifty Dollars ($1,450), payable in equal monthly installments in advance, on the 1st day of each and every month during said term.

3rd. That defendant entered and occupied said apartment, pursuant to said instrument of letting, and thereafter and on or about the 3rd day of May, 1920, plaintiff and defendant agreed in writing to a renewal thereof for a further term of two years, commencing the 1st day of October, 1920, at an annual rental of Two thousand one hundred and sixty Dollars ($2,160), payable in equal monthly installments of One Hundred and Eighty Dollars ($180) each, in advance, on the 1st day of each and every month during said renewal term

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4th. That defendant has failed and refused to pay the rent of said apartment, which fell due on the 1st day of October, 1920, amounting to the sum of One Hundred and eighty Dollars ($180).

5th. That payment of the said sum has been duly demanded and there is now due to plaintiff from defendant, the sum of One Hundred and Eighty — ($180), with interest thereon from the 1st day of October, 1920.

Wherefore, plaintiff demands judgment against the defendant for the sum of One Hundred and Eighty Dollars ($180), with interest thereon from the 1st day of October, 1920, together with the costs and disbursements of this action.

M. S. & I. S. ISAACS,
Attorneys for Plaintiff.

Office & P. O. Address, 52 William Street, Borough of Manhattan, N. Y.

STATE OF NEW YORK,
County of New York, ss:

Edgar A. Levy, being duly sworn, deposes and says that he is the president of the plaintiff corporation in the within entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

That the reason this verification is made by Edgar A. Levy instead of Edgar A. — Leasing Co., Inc., is because the plaintiff is a domestic corporation.

EDGAR A. LEVY.

Sworn to before me this 8th day of October, 1920.
HENRY L. KETCHAM,
Notary Public, Rockland Co.

Cert. filed in N. Y. Co., No. 248.
New York Register, No. 2201.

Answer Read on Behalf of Respondent.

New York Supreme Court, New York County.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

The defendant answering plaintiff's complaint by Rose & Paskus, his attorneys, respectfully shown to this Court and alleges as follows:

First. Denies each and every allegation contained in the 3rd paragraph of plaintiff's complaint except that defendant admits that he occupied said apartment and signed a lease of same commencing October 1, 1920, at an annual rental of Two thousand one hundred sixty and 00 100 ($2,160.00) Dollars payable in equal monthly instalments of One hundred and eighty and 00 100 ($180.00) Dollars each in advance, but that the signing of said lease was procured through duress and threats made by plaintiff to defendant which caused the defendant to sign said lease.

Second. Denies the allegations contained in the 4th paragraph of plaintiff's complaint, except that defendant admits that he refused to pay the sum of One hundred and Eighty Dollars.

Third. Denies the allegations contained in the 5th paragraph of plaintiff's complaint, except that defendant admits that the plaintiff demanded the sum of One hundred and eighty Dollars from defendant.

As a first affirmative defense defendant alleges:

Fourth. That on or about the 26th day of June, 1918, an instrument in writing dated on or about that date was executed by plaintiff and defendant which instrument was a lease from plaintiff to defendant of the apartment designated in said instrument as apartment "D" on the tenth floor in premises 157 West 57th Street, in the Borough of Manhattan, City of New York, for the term of two years

commencing October 1st, 1918, at an annual rental of One thousand four hundred fifty and 00/100 ($1,450.00) Dollars payable in equal monthly instalments in advance.

Fifth. That defendant entered and occupied said apartment under said lease and thereafter and on or about the 3rd day of May, 1920, a certain writing purporting to be a renewal of said lease for a further term of two years commencing on the 1st day of October, 1920, at an annual rental of Two thousand one hundred and sixty
11 Dollars payable in equal monthly instalments of One hundred and eighty Dollars in advance on the 1st of each month, was signed by plaintiff and defendant.

Sixth. That on or about the 3rd day of May, 1920, and prior to the signing of said instrument purporting to renew the said lease at an annual rental of Two thousand one hundred and sixty Dollars, the plaintiff with intent to coerce and force defendant into the signing of said renewal of lease, stated in words or substance that unless defendant would sign said renewal at the increased rental, that he would terminate his tenancy at the end of the then leased term, and he would be obliged to move.

Seventh. That the defendant believed and relied upon said statement and was fearful that plaintiff would carry out said threat and would terminate defendant's lease at the end of the leased term, and cause defendant to remove from the premises where he was then residing, and that defendant would be unable to secure any suitable or similar apartment owing to the scarcity of such apartments.

Eighth. That solely by means of such threats and coercion and duress, the plaintiff induced defendant to sign the alleged renewal of lease above mentioned providing for such increased rental.

Ninth. That defendant hereby offers and has heretofore tendered to plaintiff the rent of the month of October, 1920, in the amount of One hundred twenty and 83/100 ($120.83) Dollars which was the monthly instalment paid for said premises for the month of September, 1920.

12 As a second affirmative defense defendant alleges:

Tenth. Defendant repeats each and every allegation contained in the Fourth, Fifth Sixth, Seventh, Eighth and Ninth Paragraphs of the Answer herein, with full force and effect as though said allegations were set forth at length herein.

Eleventh. That the rent reserved in the instrument purporting to be the renewal of lease hereinabove mentioned, bearing date the 3rd day of May, 1920, and claimed by plaintiff for the month of October, 1920, is unjust, unreasonable and oppressive.

Wherefore defendant demands judgment that the so-called alleged lease signed by plaintiff and defendant as aforesaid be rescinded,

vacated and set aside, and that plaintiff's complaint be dismissed together with the costs and disbursements of this action.

ROSE & PASKUS,
Attorneys for Defendant.

128 Broadway, New York City.

STATE OF NEW YORK,
County of New York, ss:

Jerome Siegel, being duly sworn, deposes and says: That he is the defendant herein, that he has read the foregoing answer and knows the contents thereof, that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

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JEROME SIEGEL.

Sworn to before me this 10th day of November, 1920.

[SEAL.] WILLIAM L. BOIDE,
Notary Public, N. Y. Co., No. 204.

Register No. 2073.

Stipulation Waiving Certification.

It is hereby stipulated, pursuant to Section 3301 of the Code of Civil Procedure, that the foregoing consists of true and correct copies of the notice of appeal, the order appealed from and of all the papers used upon the hearing of the motion upon which the order appealed from was made, and of the whole thereof, now on file in the office of the Clerk of New York County, and certification thereof, by the Clerk of said County, as required by Section 1353 of the Code of Civil Procedure, is hereby waived.

Dated, New York City, November 29th, 1920.

M. S. & I. S. ISAACS,
Attorneys for Plaintiff-Appellant.
ROSE & PASKUS,
Attorneys for Defendant-Respondent.
CHARLES D. NEWTON,
Attorney General.

14 *Affidavit of No Opinion.*

Supreme Court, New York County.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

STATE OF NEW YORK,
County of New York, ss.

Lewis M. Isaacs, being duly sworn, deposes and says: that he is an attorney-at-law and a member of the firm of M. S. & L. S. Isaacs, the attorneys for the plaintiff herein. That no opinion was filed herein, except the following memorandum:

"Upon the foregoing papers and after hearing counsel this motion for judgment on the pleadings is denied for the reasons stated in Ullman Realty Company against Kintara Tamur decided herewith."

Annexed hereto is a copy of the opinion referred to in said memorandum.

LEWIS M. ISAACS.

Sworn to before me this 20th day of November, 1920.
HENRY L. KETCHAM,
Notary Public, Rockland Co.

Cert. filed in N. Y. Co. No. 245
New York Register No. 2201.

15 *Opinion, Special Term, Part V.*

Supreme Court, New York County.

ULLMAN REALTY COMPANY, Plaintiff,

vs.

KINTARA TAMUR, Defendant.

The motion for judgment upon a complaint founded upon ejectment and an answer pleading in content the remedies afforded under the recent Acts of the Legislature of this State known as the Housing Laws, squarely presents for determination the validity of said acts in their constitutional aspect.

The averments of the complainant, a domestic corporation, briefly stated, are, that as owner of premises No. 435 East 66th Street, a dwelling house in which the defendant, a monthly tenant from September 24th, 1918, occupied an apartment, the latter has withheld the possession of the same from the complainant since Septem-

ber 24th, 1920; that the value of the use and occupation of the said apartment is reasonably worth the sum of $35.00 per month; terminating in a prayer for judgment for both possession of the premises and a sum representing the value of the tenant's use and occupation since the alleged date of expiration.

The answer, denying the stated value of the use and occupation, pleads as a first defense the original relationship of landlord and tenant existing at a rental rate of $23.00 per month, under a monthly tenancy, with a subsequent increase in the sum to the amount
16 of $30.00 monthly, and the plaintiff's refusal to accept said sum tendered on September 24th, 1920, which the tenant has ever since been ready and willing to pay.

The second defense interposed consists of the allegations that on September 20th, 1920, after receipt of a notice from complainant that the rent would thereafter be increased to the sum of $35.00 monthly, the plaintiff refused to accept tender of the $30.00 offered by the tenant, with the further averment that such demand was solely for the purpose of illegally and unlawfully increasing the rent in excess of the reasonable value of the premises. For the purposes of the action and particularly this motion and in order to obviate any dispute as to what the reasonable value of the premises were as contemplated by the sections of the acts under consideration, the parties expressly stipulated in writing annexed to the pleadings, that such reasonable value at the present time and at the time of the institution of the suit, was $30.00 per month. The present motion, therefore, leads to a direct test of the validity of the above defenses and in turn the constitutionality of their enactments.

The history of the recent legislative action with respect to the subject matter of this action may briefly be summarized as follows: For the purpose of meeting and coping with what the legislature deemed a crisis as to housing conditions unparalleled in modern time and which it was convinced had reached a point of such acuteness during the year as to become a menace to the public health and safety and demanded immediate amelioration, on April
17 1, 1920, the Legislature of this State duly assembled, under the recommendations and importunities to be hereafter adverted to, passed Chapters 130 to 139 of the Laws of 1920, applicable alone to cities of the first class and cities within the County of Westchester, for a limited duration, in effect until the Fall of 1922. These measures palliating in effect and productive of a vast lessening in the pressures of the moment, proved, however, under the practical test of continued administration, but of surface relief and inadequate to meet the exigencies of the actual crisis. The situation plainly demanded immediate and more drastic treatment. There were conditions that constantly arose equally as unprovided for and unanticipated. The recurrence of evident oppression masked itself in different guise; situations at times appeared beyond the pale of the then remedial legislation. The astute advice of those learned in the meticulous observance of the rigid letter of the laws discovered ways and means of circumvention. The result was inevitably that which follows a subversion of the law's spirit

to its technical phrase. Comprehension of scheme with plasticity obtainable to all contingencies that spring forth and ability to give adequate and in whatever form the demands may present themselves, is not so easy of origin.

Accordingly, and at the insistent behest of the Mayor's Committee, which had occupied a place commanding most intimate knowledge and contact with housing affairs, the Governor's calling of a Special Session of the Legislature resulted in the enactment on September 27th, 1920, of the Laws of 1920, Chapter 942 to 953, supplementary and amendatory of the former Acts and calculated to more effectively meet the crisis still imminent and impending.

18 In brief the new legislation herein sought to be construed and of consequence to the proceeding at bar, is as follows:

1. Chapter 942, which regulates holdover summary dispossess proceedings allowing the same to be instituted for four reasons, namely, (*a*) where the present holdover is objectionable; (*b*) where the owner, being a natural person, seeks in good faith to recover the premises for his personal occupancy; (*c*) where the owner wishes to demolish the premises with the intention of constructing a new building; (*d*) where the premises have been sold to a corporation formed under a cooperative ownership plan.

2. Chapter 944 of the Laws of 1920, amending Chapter 136 of the Laws of the same year, providing that it shall be a defense by a tenant in an action for rent "that such rent is unjust and unreasonable and that the agreement under which the same is sought to be recovered is oppressive."

3. Chapter 945, dealing with summary dispossess proceedings for non-payment of rent, allowing the same to be brought where the rent is no greater than the amount for which the tenant was liable for the month preceding the default for which the proceeding is brought, and that in such a proceeding the reasonableness of the rent may be tested in substantially the same manner as in the action for rent which is regulated by Chapter 944 of the said law.

4. Chapter 947, which amends the Code of Civil Procedure by adding the following new section thereto in reference to the
19 recovery of real property in an action in the Supreme Court.

The complaint on its face showing that the premises involved were used for dwelling purposes and alleging no facts bringing the plaintiff within the exceptions specified in Chapters 942 and 947, as well as the evident endeavor of plaintiff to avoid the inhibitions of Section 944 admitted by plaintiff's counsel upon the argument, squarely presents the questions of alleged power and right. Does the deprivation of the landlord to the right to the remedy of ejectment under Article 1 of Title 1 of Chapter 14 of the Code of Civil Procedure, covering actions to recover real property and the denial of any claim made for any rental that might be in excess of the reasonable value of the use and occupation of the premises, under Chapter 944, violate his rights under the Constitution?

The fundamental consideration at the outset, independent of any resulting power that may thereafter be applied, is one mainly of legislative propriety. If it should be found that the power exists as a lawful exercise of the prerogatives of the Legislative in formulating a valid fiat to be applied to an existing emergency imperilling the welfare of the people of the State, the primary inquiry upon which their validity rests must necessarily be with respect to the actual necessity of the situation. Extraordinary statute law implies unusual need. Special demands must become so insistent that the failure of ordinary remedies but accentuate the requirement of supplemental and additional repairment. It is only when the
20 facts, evidence and information before it do not furnish reasonable grounds for belief that the intended legislation is conducive to the public safety, that the law-makers exceed the limits of their granted power. The Legislature had submitted to it ample evidence of housing perils to justify their immediate and serious attention. The Governor of the State, by direct message, stressed the situation in the following words:

"It has been publicly stated by the Health Commissioner of the City of New York, that this condition of uncertainty is alone a direct menace to the health and welfare of the community. The housing shortage leaves the citizen nowhere to turn: families have been broken up and dispersed generally through the city, or crowded and huddled into the homes of relatives until the health, welfare and morality of the community is seriously threatened. * * * There is an abundance of evidence that undesirability or failure to pay rent is not in the majority of instances the basis of the application for the right of summary removal, but, on the other hand, it is the operation of the profiteer who would remove the desirable and paying tenant in order to create a vacancy which may thereafter be offered to the highest bidder. As a result of this, families have been shifted from place to place without rhyme or reason, and the unscrupulous and selfish have profited immensely by it. October 1st was to be the height of the harvest. The State should step in and use its power to disappoint them. If the present condition be not thus relieved and the health of the community continues
21 to be menaced, then we have a grave public emergency to meet such as would confront us in a time of epidemic or of catastrophe."

The respective reports of his Reconstruction Commission, the later constituted Joint Legislative Committees on Housing, and the specially appointed Mayor's Housing Conference Committee of the City of New York, reiterated the crying need.*

This careful, long-continued study and examination which the Legislature was entitled to consider, supplemented by the facts of common knowledge, which, as to local conditions "does not require

*See report of the Joint Legislative Committee on Housing transmitted September 20, 1920, pages 3, 4, 5, 6, 7; Department of Health Bulletin, New Series, Vol. 9, No. 42.

evidence to establish its existence, but may be acted upon without proof." (Matter of Viemeister, 179 N. Y., 240), made it the judge of the necessity of such enactments. Whether they had a reasonable relation to the protection of the public health, safety and welfare will be hereafter considered. Whether or not its subject matter was calculated to deal fully with the problem or difference of opinion as to the wisdom of its scheme, is, of course, beside the mark, for it is not the Court's function to determine the efficacy or wisdom of the legislative voice. Its duty is to ascertain whether, viewed in any light, a reasonable legislative discretion can regard the subsequent enactment as not arbitrary and as in the furtherance of the public interest. In this connection, in People against Griswold, 213 N. Y. 92, the Court said:

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"In determining whether statutory requirements are arbitrary, unreasonable or discriminating, it must be borne in mind that the choice of measures is for the Legislature, who are presumed to have investigated the subject and to have acted with reason, not from caprice. Legislation passed in the exercise of the police power must be reasonable in the sense that it must be based on reason as distinguished from being wholly arbitrary or capricious. But when the Legislature has power to legislate on a subject the courts may only look into its enactment far enough to see whether it is in any view adapted to the end intended. If it is, the Court must give it effect, however unwise they may regard it, or however much they might, if given the choice, prefer some other measure as more fit and appropriate."

It is sufficient that from the various reports of committees and commissions heretofore alluded to, the law makers had reasonable grounds to find the existence of an emergency and the resultant endangerment of the public. Such is the legislative finding stated in peremptory declaration and persuasive to this and all courts of justice as to its warrant in the enactment of means to avert the crisis.

It would form no useful purpose in this opinion to rehearse the facts themselves in relation to the housing situation in this city which gave rise to the legislative action. A reading of the above cited reports of the various committees is fully enlightening on this subject. The intimacy of contact by every individual resident of the community confirms the verity of their content.

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The appalling conditions of family life in certain sections of this community has already been the subject of judicial discussion and concern. A public menace threatening wholesale evictions had been overhanging thousands of tenants in this city; exorbitant and extortionate demands for rent had been met with the impossibility of compliance, the consequent congestion which these conditions lead to became perilous to public health, safety and morals. The condition was a breeder of discontent and such a stalker for unrest as to become an object of apprehension as to the future good order of society.

The necessity of the remedy being apparent it remains to consider whether the Legislature was invested with the constitutional power which it has exercised. Ultimately the inquiry confronting us narrows down to the proposition whether in a time of public emergency affecting the homes and shelter of the people, endangering their health and safety, the result of an upheaval of the conditions following a world war, there exists such power and authority in governmental function as to provide that the people in the face of oppressive demands should not be summarily evicted and ejected from their homes and unprovided with shelter during the continuance of the emergency, when at all times willing and in fact, offer to pay for the use of the premises occupied by them a reasonable rental value, and whether they should be permitted to interpose in proceedings brought the defense that the rent sued for is unjust, unreasonable in amount and oppressive in character.

Indisputable must be the observation that the raison d'e être for the very existence of a representative government as ours and
24 in the exercise of its function, is the protection and welfare of the people who form its component parts, and who, in fact, constitute the State. That philosophy underlies our whole system as evidenced by the avowed intentions of its creators at the time of its birth, and has formed the basis of the repeated interpretations of its powers, as the same has for over a century been the subject of discriminate study of our courts. This material protection afforded the citizenry is the supreme purpose of all law and the ultimate endeavor of those in whose hands the security of the public is from time to time placed. The source of said power and the reservoir from which it flows ceaselessly with a "flexibility and capacity for growth and adaptation" (Hurtado against California, 110 U. S., 530) is what is definably known and recognized as the general police power of the government. Duty to society implies that the absolute ownership of property carries with it the reciprocal duty of so managing its use that the common good and general welfare will best be conserved. As Chief Justice Shaw stated, "Rights of property, like all other social rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious and to such reasonable restraints and regulations established by law as the Legislature, under the governing and controlling power vested in them by constitution, may think necessary and expedient. * * * The power vested in the Legislature by the constitution to make, obtain and establish all manner of wholesome and reasonable laws, statutes and ordinances not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same. It is
25 much easier to perceive and realize the existence and sources of this power than to mark its boundaries or possible limitations to its exercise."

Commonwealth against Alger, 7 Cush., 84.

It would seem that its scope is boundless, impossible of accurate future limitation and requiring but one and one only foundation,

It comprehends every law which in any way concerns the welfare of the public. It matters not whether rights or duties are involved. No distinction is made between relations which may be private or public, nor of rights whether personal or pertaining to property. The validity and legitimacy of its exercise is inextricably interwoven in every case with the maxim, sic utera tuo ut alienum non laedas; the preservation of the health, welfare, and morals of the public its constant aim; every matter thereto essential it includes; to every great public need it extends its arm (Caufield against U. S., 167 U. S., 518. Its comprehension of everything pertaining to the government's solicitude for the welfare of its people is perhaps nowhere better stated than in the case of Lawton against Steele, 152 U. S., at page 136, where the Court said:

"It is universally conceded to include everything essential to the public safety, health and morals and to justify the destruction or abatement by summary proceedings of whatever may be regarded as a public nuisance. Under this provision it has been held that the State may order the destruction of a house falling to decay or otherwise endangering the lives of passersby; and the demolition
26 of such as are in the path of a conflagration; the slaughter of diseased cattle; the destruction of decayed or unwholesome food; the prohibition of wooden buildings in cities; the regulation of railways and other means of public conveyance, and of interments in burial grounds; the restrictions of objectionable trades to certain localities; the compulsory vaccination of children; the confinement of the insane, or those affected with contagious disease; the restraint upon vagrants, beggars and habitual drunkards; the supervision of obscene publications, houses of illfame and the prohibition of gambling houses and places where intoxicating liquors are sold. Beyond this, however, the State may interfere whenever the public interests demand it, and in this particular a large discretion is necessarily vested in the legislature to determine, not only what the interests of the public require, but what means are necessary for the protection of such interests."

In the Slaughter House cases reported in 16 Wall, 36, the same court in their opinion and discussion of the police power possessed by the several states, and with a far-sighted view of the evils that naturally could arise to the inhabitants of over-crowded places, said:

"This power is and must be from its very nature incapable of any exact limitation. Upon it depends the security of sound order, the life and health of the citizens, the comfort of and existence in a thickly populated community, enjoyment of private and social
27 life and the beneficial use of property; it exists," says another eminent judge, "to the protection of the lives, liberty, health and comfort and equity of all persons and the protection of all property within the State * * * and persons and property are subject to all kinds of restraints and burdens in order to secure the general comfort, life and prosperity of the State. Of the perfect right of the Legislature to do this no question ever was, nor upon ac-

knowledged general principles can ever be made, so far as natural persons are concerned."

I cannot subscribe to any doctrine that hinders, or restrains our legislative power from enacting a clear and reasonable design to relieve the actual distress of the thousands of tenants in this community who would otherwise be made homeless. I think their rights to homes in which to live, during an emergency of the kind which now confronts us, is transcendently paramount to any private rights of property. The protection of their health and morals commands a vastly more important position to my mind, and of far greater moment to the welfare of the State, than any strict adherence to the individual's private rights. Exposure, disease, misery would be the natural consequence and disaster to ensue if owners were permitted to turn the occupants of their houses into the streets upon the latter's inability to meet the oppressive and excessive demands that are now constantly and as a matter of public knowledge being made. With a clear grasp of the probabilities of the situation the legislature said that temporarily and during these unprecedented conditions the absolute right of owners to deal with property which they
28 have hitherto used in the express business of sheltering and housing the public, must bow and submit to regulation. Our Constitutional government is not an impotent one. Not so readily can its arms of protection for those whose benefit it is imposed be bound and helpless; its scope and vision is wide; its power flexibly adaptable; its aim the protection of human rights. Our lawmaking body is restrained alone by the rule of reason as to the means adopted for the accomplishment of its purposes. To deny it such powers would be subversive of the principles upon which it was founded and of the postulates of dedication its creators avowed. It would deservedly be an indictment against and a reproach to our entire system of government. Salus populi suprema lex.

This fundamental concept permeates our entire law. "If it be within the power of the Legislature to adopt such means for the protection of the lives of its citizens (referring to cases where the hours of labor in certain occupations were limited) it is difficult to see why precautions might not also be adopted for the protection of their health and morals. It is as much for the interest of the State that the public health should be preserved as that life should be made secure," said our Supreme Court in Holden against Hardy, supra.

The Court of Last Resort of our own State in matter of petition of Cheesbrough, 78 N. Y., at page 236, has thus referred to the State's inherent power in times of emergency. "The police power possessed by the State and conferred by it upon municipal corporations is very broad and far-reaching and it is impossible to place upon it any precise limitation. By its exercise in many cases rights of property and of person may be interfered with and largely impaired
29 without any compensation. Nuisances may be abated by private persons without any liability for damages and by the

public without making any compensation, because no one has the legal right to maintain a public nuisance. In cases of actual necessity, as that of preventing the spread of fire, the ravages of a pestilence, the advance of a hostile army and any other great calamity, the private property of an individual may be lawfully taken, used or destroyed for the general good without subjecting the actors to personal responsibility. In such cases the right of private property must be made subservient to the public welfare and it is the imminent danger and the actual necessity which furnish the justification. Salus populi suprema lex."

Plate Glass Co. against Meredith, 4 Penn. R., 774;
Potter's Dwarris on Statutes, 144;
Cooley's Constitutional Lim. (4th Ed.), 713;
Dillon on Mun. Corp., Sections 94-95;
Sedgwick on Constitutional Law, Sections 423, 473.

Technical and ordinary rights can thus be temporarily interfered with or appropriated; necessity is its justification; the public welfare its basis. Bowed in submission they stand suspended until the necessity passes away. It is but then that they take form again and are entitled to recognition.

Litchfield against Bond, 186 N. Y., 73, is a restatement of the rule: "It is to be observed, moreover, that the police power which is concededly an inherent attribute of sovereignty, shall be permitted to override or nullify our constitutional limitations only in cases of the highest public necessity; that governmental power, like every other, is subject to the constitution, and when it is paramount it is because it is not limited by the constitution, or because some other immediate and overruling emergency calls for the application of the maxim salus populi suprema lex."

A condition of affairs existed concerning which our Legislature exercised its granted right to enact laws for the protection of the health and welfare of its people. If the end be a legitimate one, all means, which are not arbitrary and oppressive, but are appropriate and reasonable and adapted to that end are within the legislative grant of power. I think there can be little doubt that the enactments in question bore a just relation to the protection of the public within the scope of its power and were reasonable and appropriate in character. The owner receives adequate compensation for the use of his property. If at the time of demand for increase he considers his return too low, the Act affords him a means of recovery for "a fair and reasonable rent for the premises." Where he bonafidely desires it for his own immediate use, no obstruction is placed in his way. In the event of a tenant's failure to pay any rent at all he is given a prompt and efficient remedy; in fact, the Act (see Sections 5 and 6 of Chapter 944) affords him a novel and extraordinary remedy, namely, the right to a warrant if a previous money judgment for rent or value of the premises is not with promptness paid. It makes as a condition precedent to the tenant's availing himself of the statutory defense, the requirement of his payment into court of a sum equal to the last month's rent.

The only impairment of any property right heretofore ap-
31 pertaining is, during the continuance of the crisis, that of the right to eviet and eject where the tenant has no other alternative than involuntary submission to extortionate demands. Instead of an entire deprivation with reasonable compensation as admittedly would be the owner's return under the self-same police power exercised under the guise of eminent domain, here he retains title and receives a reasonable return therefrom. I think it unquestioned that this precise emergency would have justified the condemnation of lands and leaseholds for the purposes of shelter on payment of just compensation. The State here exacts even less from him. The same purpose though is achieved. The State obtains means of shelter for its inhabitants; the property owner ample and reasonable compensation for its use, adequately secured.

The right to set up a defense of a demand for oppressive rent is no novelty in the law. Statutory form given by the act to a right always existent lends to it no extra color or potency. Freedom from restraint, coercion and duress is but a re-statement of the primary purpose of the police power. The governmental duty of protection against those in whose hands lay the instrument of oppression is co-extensive with that against all other perils to life and safety. We find it aptly stated in the Hardy case (supra), "But the fact that both parties are of full age and competent to contract, does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract should be protected against himself. The State still retains an interest in his welfare
however reckless he may be. The whole is no greater than
32 the sum of all the parts, and when the individual life, safety and welfare are sacrificed or neglected, the State must suffer." (To same effect see People against Schweinler, 214 N. Y., 395.)

Tenants here were constrained by the owner's power; they were confronted by disaster due to pecuniary inability of compliance; there was no range afforded them for the free exercise of judgment. All things led to the imposition of unfair conditions. Under such circumstances equity has ever given relief. Feeble tenantry never lacked the protection of the State (see Gibbons' History of the Roman Empire, Vol. 4, page 199, Harper Edition; see discussion in Van Dyke against Wood, 60 App. Div., 212).

The case was not as has been urged upon me with considerable sincerity of argument, where one of the parties to a contract is bound, while the other can at will relieve himself from its obligation. The principle of mutuality implies an equal opportunity of bargaining. It can never obtain so as to place the perpetrator of oppression in a position where he can exact or extort inequity.

Moreover, the statutes in only permitting the tenant to remain in possession upon condition that he pay the reasonable rental value, whatever its enhancement in amount might be, give express effect to the anciently recognized right or equity of "chance"—in other words, the tenant's equitable right of renewal. In Ireland it was formerly held that the fact that the tenant's name was on

the rolls of the Manor "built him by slow degrees a fortress against unjust exactions and summary ejectments."

Montgomery Land Tenure in Ireland, pages 90 and 91.

33 O'Brien declared, "In England the tenant farmer was engaged to improve his land knowing that at the expiration of his lease he would be granted a renewal at a reasonable rent." (Economic History of Ireland in the 18th Century, p. 68.) The fight for recognition of this right was sharp and bitter as evidenced by the History of Land Tenure in those countries, but the evolution was sure and ultimately secured the sanction of statute law (see Report of Bessborough Commission, appointed in 1881, and Irish Land Act, of same year).

The tenant's right of renewal in equity was very early litigated in Boyle against Ly-aght.

Vernon & Scrivens' Rpts., Vol. I, 1786-88, pages 142-6. The Lord Chancellor referred to the great difficulties that arose in courts of equity concerning leases, saying: "It happened that tenants neglected to make renewals upon the fall of the lives and were guilty of great laches; landlords thereupon brought ejectments and the tenants resorted to courts of equity for relief; the courts of equity, where the breach was made up by an adequate compensation, thought that they were entitled to relief. * * * Courts of equity were very glad to lay hold of that rule and in every case that came before them afterwards they held that the tenant was entitled to a renewal upon those terms, except in cases of fraud or dereliction." See also Murray against Bateman, Ridgeway's Cases in Parliament, 187, where the reversal in the House of Lords resulted in the passage of Act- 19 and 20, George III, 1779-80. To same effect see later statute of 6th Edw. VII (1906), Chapters 5 and 6, and Scotch Small Landholders' Act of 1911 (1 and 2 Geo. V Statutes and Vol. 19, p. 237, Sec. 32).

34 Even of recent date Chapter 97 of the Acts of 1915, 5 and 6, Geo. V, dealing with the housing situation, are of compelling interest. Section 1, subdivision 3 therein, provides:

"No order for the recovery of possession of a dwelling house to which this act applies, or for the ejectment of a tenant therefrom, shall be made so long as the tenant continues to pay rent at the agreed rate as modified by this act and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste, or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighboring occupiers, or that the premises are reasonably required by the landlord for the occupation of himself, etc."

Even without statute the Supreme Court of Maryland in 1876 gave force to the rule in Banks against Hoskie, 45 Md., 207. The tenant had been guilty of laches in failing to renew the lease and five months after an action of ejectment had been brought he filed a bill in equity (a little more than three years and nine months after the expiration of the original term) to enforce his right of re-

demption, the Court holding, "The long use of this species of tenure by our people, the vast amount of property held under it and involved in and to be affected by the general principle which our courts may establish as controlling the right of renewal of such leases have, as appears to us, raised a local equity here equally strong in favor of the lessees as the like facts and circumstances more than a century ago raised in Ireland—an equity which we cannot overlook or disregard and which constrains us to follow and adopt the more liberal principles and practice of the Irish courts in
35 such cases. In so doing we are in no wise making new agreements for the parties in these cases, but simply enforce the carrying out of what we understand to have been the original intention of the parties to such instruments and make them subserve the purposes which they were originally designed to accomplish."

Renewal upon fair and equitable terms in the absence of fraud and objectionability was the underlying principle upon which the noted case of Mitchell against Reed, 61 N. Y., 123, was based. There the Court gave full recognition to the rule: "It has long been an established practice to consider those who are in possession of lands under lease for lives or years as having an interest beyond the subsisting term and this interest is usually termed the tenant right of renewal, which, though according to language and ideas strictly legal is not any certain or even contingent estate, but only a chance, there being no means of compelling a renewal, yet is so adverted to in all transactions relative to leasehold property that it influence the price in sales and is often an inducement to accept of it in mortgages and settlements. * * * This 'tenant right' of renewal, as it is termed, however imperfect or contingent in its nature, being still a thing of value, ought to be protected by the courts of justice and when those who are entitled to its incidental advantages, whether by purchase or through derivation are disappointed of them by fraud, imposition, misrepresentation or unfair practices of any kind, it is fit and reasonable that those injured should have redress. Accordingly, courts of equity have so far recognized the tenant right of renewal as frequently to interpose in its favor by decreeing that new or reversionary leases given
36 by means or supposition of the tenant right of renewal, should be for the benefit of the same persons as were interested in the ancient lease, and those who procured such new leases and were lawfully possessed of them, should be trustees for that purpose."

It is clear that these statutes are but an embodiment of the above doctrine. They are but emphatic memorials of long standing, custom and restraint evidenced by Irish, Scotch, English, Maryland and New York precedents. To hold otherwise and nullify their salutary purposes would be closing our eyes to what has for hundreds of years been recognized. To deny such remedy would amount to a reversion of our law to a regime of antiquity.

Historical reference to the growth of the law with reference to callings and trades, clothed with such a relation to public necessity

and use as to render them subjects of general concern, affords further support of the present acts' validity. Occupations and trades of farriers, millers, tailors, bakers and the like in olden times, it was observed, if left unregulated, would practically become unlimited in their power to prey upon the people in the exaction of returns. Economic conditions invested them with a degree of interest to the public, the latter possessed an interest in their use. Munn against Illinois, 94 U. S., 113, was the first definite announcement of the principle here, though from the standpoint of precedent clouded with a certain doubt as to whether the decision was not entirely based on the principle of a monopoly. However, by degrees the doctrine, if initially impregnated upon this foundation, broke away (see Budd against N. Y., 143 U. S., 517) until it took its true
37 position in German Alliance Ins. Co. against Kansas, 233 U. S., 389, where the true principle was finally laid down. The Court there said, in speaking of this character of cases:

"They demonstrate that a business by circumstances and in its nature may rise from private to be of public concern, and be subject in consequence to governmental regulation, and they demonstrate, to apply the language of Judge Andrews in People against Budd (117 N. Y., 27), that the attempts made to place the right of public regulation in the cases in which it has been exerted and of which we have given examples upon the ground of special privilege conferred by the public on those affected cannot be supported. 'The underlying principle is that business of certain kinds holds such a peculiar relation to the public interests that there is superinduced upon it the right of public regulation.'"

We see its application in the regulation of such private and competitive callings without special legislative permit, as fire insurance, grain elevators, laundries and bread baking (Murray against Illinois, supra; Budd against N. Y., supra; German Alliance Fire Ins. Co. against Kansas, supra; Oklahoma Operating Co. against Love, 252 U. S., 331; Mobile against Yuile, 3 Alabama N. S., 140).

Can it be given application in the above cases and denied in the instant case? If they were the subject of public interest to an extent warranting governmental interference, surely in this time of housing shortage the State is not pre-empted of power to shelter its people. I see no question of public interest in those cases superior to that appearing in the case at bar. Legislature is the unrestricted
38 agent of the people; it possesses their full power. Surely the sovereign people are not helpless in a situation fraught with such imminent danger. Government is more than an empty form; assuredly it is clothed with adequate powers of remedy and protection to meet the demands of emergencies as they arise. "It would be a bold thing to say that the principle (warranting public regulation of private property and business) is fixed, inelastic in the precedents of the past and cannot be applied though modern economic conditions may make necessary or beneficial its application. In other words, to say that government possessed at one time a greater power

to recognize the public interest in a business and its regulation to promote the general welfare than government possesses today."

German Alliance Ins. Co. against Kansas, supra.

The most recent decision on this subject, as yet unreported, is that of the District Court of the U. S., for the District of Indiana (Baker & Evans, Cir. JJ., and Geiger, D. J.) in the case of American Coal Mining Co. against The Special Coal and Food Commission of Indiana, decided September 6th, 1920, where emphatic approval was given to the legislative exercise of the police power in the creation of a Coal Commission with authority to fix charges and reasonable prices at which coal should and must be sold within the State of Indiana. The act was passed on the assumption that coal had, by reason of shortage and emergency, become a commodity in which the public had an interest, and which the State therefore had a right to regulate in that interest. The Court held the act constitutional and declared that the State had the power to effect and regulate the coal mining business. In the course of its opinion it said:

"There is no distinction as to the source of power of regulation. It all comes from the police power, dividing that into the two subject matters upon which the police power operates—the one based upon the public franchise or the like, and the other upon abuse of the theretofore existing right of private contract or private property—when in the one case you find that the evil to be cured is extortion and the remedy is price regulation, then in the other case, when extortion is also found to be the evil, you should apply the known remedy for extortion. The power is one; the evil is the same evil; and the remedy is drawn from the same reservoir, though from different faucets. There is no infringement of the right of a man to hold property. If under the power of eminent domain it is taken from him for a public use and the fair value of it is paid him. That is a constitutional thing and there is no objection to it. So, when it comes to regulating the returns that he shall receive from his property, that is not taking his property; it is simply a control of his property as an instrument in his hand, with which the Legislature has found that he has been bludgeoning the people."

Sharp assail is made against Chapter 947, which for the period of two years suspends the remedy of ejectment in holdover cases after the termination of leases, the reason for its enactment being tersely stated as follows, in the Joint Legislative Committee's explanatory note:

"The summary proceeding of holdover being taken away a landlord can begin an action in the Supreme Court and recover judgment against the tenant by default in twenty days, and thus defeat the purpose of the Legislature abolishig holdovers except in three instances." The ground of the objection seems to be based upon the claim that there results a partial destruction of the

full jurisdiction of the Supreme Court granted by Section 1 of Article 6 of the Constitution of the State of New York, providing that, "The Supreme Court is continued with general jurisdiction in law and equity."

In other words, the contention is, in the main, that no existing remedy whatsoever can be suspended, impaired or taken away whatever the considerations as to public health, safety and welfare may be at the time pressing themselves for expression to the legislative mind. I find no succinct or direct expression of such a proposition in the Constitution itself, nor any implication pointing to such an inference. On the other hand, I find direct inference to the contrary and as plain as I think language could express the framers' intention that remedies should not be indestructible and fixed in form, but may, at the will of the Legislature be changed, suspended, or even destroyed.

Section 16 of Article 1, reads: "Such parts of the common law and of the Acts of the Legislature of the Colony of New York as together did form the law of the said Colony on the 19th of April, 1775, and the resolutions of the Congress of the said Colony and of the Convention of the State of New York in force on the 20th day of April, 1777, which have not since expired, or been repealed or altered; and such Acts of the Legislature of this State as are now in force shall be and continue the law of this State, subject
41 to such alterations as the Legislature shall make concerning the same."

It follows that a holding to the effect that Article 6, above alluded to, bars the law-making body in the exercise of its governmental authority from suspension or abridgement of a remedy which was theretofore obtaining, would be tantamount to the complete nullification of a power clearly expressed in the Constitution itself. Of course, such is not the true construction of that instrument, nor is it the law. The question has already been before the Court of Appeals In Matter of Stilwell, 139 N. Y., 337. It was disposed of in this way: "The general jurisdiction conferred upon the Supreme Court by the Constitution does not operate to prevent the Legislature * * * from changing the common law or from regulating or altering the jurisdiction and proceedings in law and equity in the same manner and to the same extent as had been exercised by it before the Constitution of 1846 was adopted."

The contention, if meritorious, would make irremovable and unamendable every right and remedy now existing, however strong the demand for change might be. It would make binding upon us and all future generations living under totally different circumstances and subject to changed economic laws, the judgment of the past applicable to other conditions as enacted in statutory form. No matter what the development or change, how strong the pressure, how insistent the demands for relief, a growing people would forever be subject to a decadent, antiquated and outworn system of remedial forms.

The history and development of our procedures bears convincing evidence that such contention is based upon neither authority
42 or principle. Examples thereof abound. I might take occasion to refer to one that has been called to my attention. Section 1780 of the Code of Civil Procedure forbids the Supreme Court to take jurisdiction over certain causes of action brought against foreign corporations by non-residents of the State. Prior to this law the Supreme Court had exercised jurisdiction in this class of cases in its discretion; the new act absolutely divested it of that discretion. Its validity was challenged upon this ground in Payne against N. Y. S. & W. R. R. Co., 157, App. Div., 302, where the Court, in overruling the contention, said

"Nor do we think that Section 1780, as aforesaid, so far as it regulates the exercise of the general jurisdiction of the Supreme Court, may be challenged properly as an attempt to deprive the said court of some part of its general jurisdiction conferred upon it by the Constitution (Article 6, Section 1). The Courts of this State are not bound generally to assume jurisdiction of causes of action arising outside of the State which exist only between parties not residents of the State. (Collard against Block, 81 App. Div., 582.) The provisions of Section 1780 as aforesaid disclose the public policy of this State as to actions by non-residents against foreign corporations and in making the decision the Legislature did not exceed its power."

See to same effect:

People ex rel. Crane against Hahn, 228 N. Y., 309;
People ex rel. Ryan against Green, 58 N. Y., 295.

The purpose and intent of the framers was not the per-
43 petuation of any given remedy, but the continuance of this Court as a court of general jurisdiction over all remedies which at any time exist. There is no prohibition of exercise of the police power barring any particular remedy. The effect of Chapter 947 is simply that an action of ejectment is still maintainable in the Supreme Court in all cases where the public interest does not require its temporary suspension, being a procedural regulation it follows that "Statutes regulating legal remedies are generally construed as operative upon an existing condition of things, as well as upon conditions to arise after the enactment."

Laird against Carton, 196 N. Y., 169;
Sacklein against Pigueron, 215 N. Y., 62.

The defendant was in possession on September 27, 1920. The law provided that after that date no tenant then in possession should be evicted unless within the specified exceptions. No facts being alleged which would bring the landlord under these exceptions, the remedy of ejectment must be denied.

Insistent stress is made against the validity of the laws in question in respect to the claim of constitutional restraint against not

only the impairment of contractual rights, but the ability to contract as one deem expedient. Unquestionably both results entail, but without defying constitutional limitations. The grant of power implies its application to a given status. Regulatory provisions must perforce, to a certain extent, create disturbances and changes in existing rights. By the same token, they prohibit or restrain former permissible latitudes of use. The mutual concessions thus
44 made by the individual form the sum and total of the common good for all. As has been frequently stated, underlying and qualifying every individual right, are regulatory requirements made for the public interest (Hadacheck against Los Angeles, 239 U. S., 334; People ex rel. Nechamcus against Warden, 144 N. Y., 529). All rights are thus dependent and of a subservient character. Thus in the Legal Tender cases, 12 Wall. 551, the rule was at an early date defined:

"As in a state of civil society property of the citizen or subject is ownership, subject to the lawful demands of the Sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government and no obligation of the contract can extend to the defeat of legitimate governmental authority."

Alteration and even total destruction have thus resulted from its legitimate exercise. All contracts are made in the light of such possibility. Otherwise the police power—that salutary, ever-present supervision of the governmental eye—might at random by individual contracts entered into be so confined, restricted and circumscribed as to render it powerless. The powers of the State in this respect are not subject to estoppel by private parties. (The Union Dry Dock Co. against Georgia P. S. Corp., 248 U. S., 372; Louisville & Nashville R. R. Co. against Mottley, 219 U. S., 467; Douglass against Kentucky, 168 U. S., 488; People ex rel. Village of Glens Falls against P. S. C., 225 N. Y., 216; 12 Corpus Juris, pp. 991-3.)

Numerous authorities may be cited where after a holding that a law was passed in the public interest and was reasonably cal-
45 culated to subserve it, the exercise of the police power not merely interfered with, but impaired to a great degree and even destroyed contractual rights. To comment upon these would unnecessarily lengthen this opinion. Their authority is clear and absolute. The following excerpts from the recent case of Union Dry Dock Co. against Georgia P. S. C., supra, and Erie Railroad Co. against Willis, 233 U. S., 685, will suffice. In the former the Court said:

"That private contract rights must yield to the public welfare where the latter is appropriately declared and defined and the two conflict, has been often decided by this Court. Thus in Manigault against Springs, 199 U. S., 132-480, it was declared that 'it is the settled law of this court that the interdiction of statutes impairing the application of contracts does not prevent the State from properly exercising such powers as are vested in it for the promotion of

the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may therefore be effected.' * * * In Atlantic Gas Line R. R. Co. against Goldsboro, 232 U. S., 558, the Court said. 'It is settled that neither the contract clause nor the due process clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise.'

46 In the latter the Court said:

'Liberty of making contracts is subject to conditions in the interest of the public welfare and which shall prevail—principle or conditions—cannot be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself and it has been said many times that each act of legislation has the support of the presumption that it is an exercise in the interest of the public.'

This contention, of course, is unrelated entirely to the subject matter of the present suit where the tenancies are monthly, or from month to month, as the pleadings here show the tenancy at bar to be. The relation existing on September 24th, 1920, between the parties was based, not upon a contract made prior to that date, but upon a renewal thereof from month to month, and was in the minds of both parties made in contemplation of the existing law of April 1, 1920, then in force permitting the interposition of such a defense.

As to the individual's liberty to contract the well established law presents no obstruction to the State's use of the police power. To contract as one chooses or do as he wills never was the individual's absolute right. The boundaries of one's power to contract though broad still have limitations. As stated in Chicago B. & Q. R. E. Co. against McGuire, 219 U. S., 549, "The guarantee of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from
47 reasonable regulations and prohibitions imposed in the interests of the community."

The challenge raised that the acts offend the due process clause of the State Constitution and the 14th Amendment of the Federal Constitution is met by the interpretative observations of the Court of Last Resort to the same effect respecting property rights. The cases universally denominate such taking as a taking by due process of law. (Nobbe State Bank against Haskell, 219 U. S., 104; Eberle against Mass., 232 U. S., 700; Lincoln Trust Co. against Williams Building Corp., 229 N. Y., 313; Tenement House Department against Moescher, 179 N. Y., 325; Cockcroft against Mitchell, 187 App. Div., 189.) It was stated in the latter case:

"It is also true that in many instances, clearly so in the case at bar, compliance with these provisions may entail hardship upon the owners of buildings which, at the time of their erection, fully complied with all existing provisions of law. Hardship, however, does not mean confiscation, and unless it results from an unreasonable exercise of arbitrary power on the part of the Legislature, no degree of hardship can justify the Court in nullifying legislative enactments embodying the will of the people, since it is the primary duty of the Legislature to meet the common interests of the whole people even at the expense of personal or local interests."

Vested property rights are therefore not at all times absolute and without limit. The law demands regard for the rights of others and allows an incidental injury, if not arbitrary, and is in direct
48 furtherance of the public good. (See also to the same effect, Chicago, B. & Q. R. R. Co. against Drainage Commissioners, 200 U. S., 561.)

Repugnancy to the Constitution is claimed in that the acts constitute class legislation and make unreasonable and arbitrary distinctions between persons and different classes of persons and grant special and exclusive privileges and immunities for the benefit of certain ones. It is argued that they operate not on all rental property, but alone upon dwelling houses, in that respect effecting a virtual discrimination. Obviously, no extensive discussion is required to point out the distinction between the ordinary dwelling house where persons make their permanent homes and hotels and rooming houses, mainly occupied by transient guests. The one is not comparable in importance, so far as it is a matter of public concern, to the other. The evil aimed at had its roots in the one. To it alone the Legislature properly addressed its attention. Indeed, similar classifications relating alone to the residential property have been upheld by our courts. (Cusack Co. against Chicago, 242 U. S., 526; Welsh against Swasey, 214 U. S., 91.) Discriminating between a holdover tenant who is in fact, objectionable, and one who is not, is plainly reasonable. Permitting a natural person to retake possession for his own use, while denying the same right to a corporate owner, simply recognizes the fact only natural persons need homes.

Upon principle all regulation must needs in turn classify either persons, business or property. In that respect the law making power is supreme. It can and does take up each class and apply to it
49 different rules. Its only limitation is a forbidance of exercise where the legislative action is unconceivable as resting upon reason and fact.

Price against Illinois, 238 U. S., 446;
Central Lumber Co. against South Dakota, 226 U. S., 157;
Lindsley against Nat. Carbonic Gas Co., 220 U. S., 661;
People against Havenor, 149 N. Y., 195.

The constitution only requires that those similarly situated shall be treated alike, not that all shall be subject to the same regulations. Where the circumstances differ the laws applicable may also differ.

In the instant case all within the same class are alike affected and only different classes of persons, under different conditions, are subject to appropriate discriminations. The classification may rest upon even narrow distinctions, said the Court in Rast against Van Deman and Lewis, 240 U. S. 342:

"It is the duty and function of the Legislature to discern and correct evils, and by evils we do not mean some definite injury, but obstacles to a greater public welfare. Enbank against Richmond, 226 U. S., 52, 59. And we repeat, 'it may make discriminations if founded upon distinctions that we cannot pronounce unreasonable and purely arbitrary.'"

Quong Wing against Kirkendall, 223 U. S., 59, 62.

Nor is the applicability to cities of a million or more, or cities of the first class and counties adjoining, a denial of an equal
50 protection of the laws. The menace existed entirely in densely populated sections. The emergency had to be met where it raised its threatening head. People ex rel. Armstrong against Warden, 183, N. Y., 223; Tenement House Dept. against Moescher, 179 N. Y., 325; People ex rel. Ensfield against Murray, 149 N. Y., 367.

It may not be amiss to revert to recent observations made by several of my brothers, solely by way of dicta, as to the purport of these laws. It is observed by one that the statutes in effect deprive the dwelling house owner of his "right to withdraw the grant by discontinuance of the use," at the same time admitting that the basis of leasing tenements is charged with a public use. Such contention clearly minimizes the extent of the police power to a point of virtual uselessness. On the other hand, bona fide intent of withdrawal is both recognized and given aid by the acts in question. Should the landlord wish to tear down his house or use it for personal purposes or grant it over to a co-operative group, who might desire to maintain it themselves, no former remedy is withheld from him. Both ejectment and summary proceedings are at his command and he can complain of no possible abridgement of remedy. If it is the absolute and arbitrary use of the premises inimical to the interests of the State and its people, with no inequitable burden cast upon the owner that is referred to in the observation noted, the statutes accept the challenge and under the authorities heretofore mentioned are clothed with full and complete constitutionality.

51 Another has commented upon the inevitable lessening in the value of the use of property where the liberty of one's action regarding it is curtailed as indicative of offense against constitutional rights. In the first place, the claim totally ignores the scope of the police power where the interests of the public require a curbing of hitherto unrestricted rights; and, secondly, that the reduction of the value of property, or its use, is insufficient of itself to invalidate the legislation. Deprivation in value does not constitute an invasion of the constitutional guarantees given to citizens

(Eberle against Mass, supra; Mugler against Kansas, 123 U. S., 623; Boston Beet Co. against Mass, 97 U. S., 25).

Hirsh against Block (47 Wash. Law Reports, 378), where a divided Court in the District of Columbia construed a statute relating in part to housing conditions and held the same unconstitutional is cited against the validity of the present acts. I regard the case as of no consequence or authority to the present inquiry. There it was attempted to regulate all rental property—stores, offices, hotels, as well as dwellings—and more important—the statute expressly denied the right of trial by jury to owners in the prosecution of their claims for increased rentals thereof; the case involving only the right to possession of a store to be used for purely business purposes and entailing a denial of the undoubted right to a jury trial, I think it evident that the decision was correctly made, and of no controlling import to the one at bar.

52 To summarize the above considerations would serve no useful purpose except of emphasis. Our Constitution is not so inflexible, unyielding and immovable, that our law-making bodies lie prostrate at its feet, powerless to give legislative succor in the face of a peril threatening the health, morals and even the lives of the people.

For a century and a half our constitutional restraints have received interpretations benefitting every emergency and public need. The statutes in question were enacted to avert a crisis. No constitutional right of the owner of property was transgressed. No sound reason is advanced that the governmental aid was not lawfully exerted.

Motion for judgment upon the pleadings denied with appropriate costs.

53 *Notice of Appeal to Court of Appeals.*

New York Supreme Court, Appellate Division, First Judicial Department.

EDGAR A. LEVY LEASING CO., INC., Plaintiff-Appellant,

against

JEROME SIEGEL, Defendant-Respondent.

Take notice, that pursuant to an order of this Court duly made and entered in the office of the Clerk thereof on December 30th, 1920, granting leave to appeal herein, plaintiff hereby appeals to the Court of Appeals from the order of the Appellate Division of the Supreme Court, First Judicial Department, made herein, dated and entered on the 24th day of December, 1920, affirming an order of the Supreme Court, New York County, entered in the office of the Clerk of New York County the 26th day of November, 1920, denying the motion of said plaintiff for judgment upon the plead-

ings; and the plaintiff appeals from each and every part of said order, as well as from the whole thereof.

Dated, New York, December 31, 1920.

Yours, etc.,
M. S. & I. S. ISAACS,
Attorneys for Plaintiff-Appellant.

Office and P. O. Address, #52 William Street, Borough of Manhattan, New York City.

54 To:

Alfred Wagstaff, Esq., Clerk of the Appellate Division of the Supreme Court for the First Judicial District.
Charles D. Newton, Attorney General, State of New York.
William F. Schneider, Esq., Clerk of the County of New York.
Rose & Paskus, Esqs., Attorneys for Defendant-Respondent.

55 *Order of Affirmance.*

At a Term of the Appellate Division of the Supreme Court Held in and for the First Judicial Department, in the County of New York, on the 24th Day of December, 1920.

Present—Hon. John Proctor Clarke,
Presiding Justice.
" Frank C. Laughlin,
" Victor J. Dowling,
" Edgar S. K. Merrell,
" Samuel Greenbaum,
Justices.

[5668.]

EDGAR A. LEVY LEASING CO., INC., Appellant,

vs.

JEROME SIEGEL, Respondent.

An appeal having been taken to this Court by the plaintiff from an order of the Supreme Court, New York County, entered on the 26th day of November, 1920, denying plaintiff's motion for judgment upon the pleadings, and said appeal having been argued by Mr. Louis Marshall for appellant, Messrs. Rose & Paskus for respondent, Messrs. William D. Guthrie and Julius Henry Cohen, Special Deputy Attorneys General, for the Attorney General, and Messrs. Elmer G. Sammis and Bernard Hershkopf, for the Joint Legislative Committee on Housing, as amici curiæ; and due deliberation having been had thereon, it is hereby ordered that the order so appealed from be and the same is hereby affirmed with $10 costs and disbursements; two of the Justices dissenting.

Enter,

V. J. D.,
J. S. C.

56 *Order Granting Leave to Appeal.*

At a Term of the Appellate Division of the Supreme Court, first Judicial Department, Held at the Appellate Division Court House, in the [Borough of Manhattan],* City of New York, on the 30th Day of December, 1920.

Present Hon. John Proctor Clarke, P. J.
Frank C. Laughlin,
Victor J. Dowling,
Edgar S. K. Merrell,
Samuel Greenbaum,
JJ.

EDGAR A. LEVY LEASING CO., INC., Appellant,

against

JEROME SIEGEL, Respondent.

On reading and filing the annexed consent, and it appearing to the Court that questions of law are involved which ought to be reviewed by the Court of Appeals.

Now, on motion of Messrs. M. S. & I. S. Isaacs, attorneys for the plaintiff-appellant, it is unanimously certified that questions of law are involved, which, in the opinion of this Court ought to be reviewed by the Court of Appeals, and it is

Ordered, that leave to appeal to the Court of Appeals from the said order of affirmance of this Court, entered herein on the 24th day of December, 1920, affirming the order of Special Term denying plaintiff's motion for judgment on the pleadings be, and the same hereby is granted, and it is further

57 Ordered, that the questions certified to the Court of Appeals be, and hereby are stated as follows:

First. Is the first alleged affirmative defense pleaded in said answer sufficient in law on the face thereof.

Second. Is the second alleged affirmative defense set forth in the answer sufficient in law upon the face thereof.

Third. Is Chapter 944 of the Laws of 1920 a constitutional act.

Fourth. Does Chapter 944 of the Laws of 1920 deprive the plaintiff of his liberty or property without due process of law, in violation of Article I, Section 6 of the New York Constitution, and Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Fifth. Does Chapter 944 of the Laws of 1920 constitute the taking of private property belonging to the plaintiff for private use

[*Words enclosed in brackets erased in copy.]

without just compensation, in violation of Article I, Section 6 of the New York Constitution.

Sixth. Does Chapter 944 of the Laws of 1920 deny to the plaintiff the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States.

Seventh. Does Chapter 944 of the Laws of 1920 impair the obligation of the contract between the plaintiff and the defendant, in violation of Article I, Section 10 of the Constitution of the United States.

Enter,

V. J. D.,
J. S. C.

58 We hereby approve and consent to the entry of the foregoing order.

Dated, New York, December 30, 1920.

M. S. & I. S. ISAACS,
Attorneys for Plaintiff.
ROSE & PASKUS,
Attorneys for Defendant.

Approved as to form.

WILLIAM D. GUTHRIE,
JULIUS HENRY COHEN,
Special Deputy Attorneys-General.

59 *Opinion.*

Supreme Court, Appellate Division, First Department.

November, 1920.

John Proctor Clarke, P. J.
Frank C. Laughlin,
Victor J. Dowling,
Edgar S. K. Merrell,
Samuel Greenbaum,
JJ.

No. 5668.

EDGAR A. LEVY LEASING CO., INC., Appellant,

vs.

JEROME SIEGEL, Respondent.

Appeal by the Plaintiff from an Order of the Special Term Denying its Motion for Judgment on the Pleadings.

The complaint alleges that the plaintiff is a domestic corporation; that on June 26, 1918, it rented to the defendant a certain apart-

ment in premises known as No. 157 West 57th Street, Borough of Manhattan, at the annual rental of $1,450, payable monthly in advance on the first day of each month; that defendant entered into possession of the premises, and on the 3rd day of May, 1920, plaintiff and defendant agreed to a renewal of the lease for the further period of two years from October 1, 1920, at the annual rental of $2,160, payable in equal monthly installments; that defendant has failed to pay the rent of said apartment falling due on
60 the first day of October, 1920, amounting to $180, which sum is now due and owing to the plaintiff.

The answer alleges that the signing of the new lease was procured through duress and a threat on the part of the landlord to terminate the tenancy at the expiration of the term; denies that there is due the plaintiff the sum of $180; as a first affirmative defense, it is alleged that on June 26, 1918, plaintiff and defendant executed a lease of said premises for two years from October 1, 1918, at the annual rental of $1,450, that on May 3, 1920, plaintiff and defendant signed what purported to be an extension of said lease for two years from October 1, 1920, at the annual rental of $2,160; that prior to the signing of the said renewal, the plaintiff stated to the defendant that if he did not sign the renewal, plaintiff would terminate his tenancy at the expiration of the existing term and cause him to move; that the defendant believed the said statement and relied upon it, and was fearful that he would be unable to secure similar or suitable apartments owing to their scarcity; that solely by reason of such threats, coercion and duress, plaintiff induced defendant to sign such renewal; that defendant offers the rent for the month of October, 1920, at the old rate; and as a second affirmative defense, the defendant realleges the allegations of the first affirmative defense, and further alleges that the rent reserved in the instrument of May 3, 1920, is unjust, unreasonable and oppressive.

The appeal involves the validity of Chapter 944 of the Laws of 1920, which was enacted at an Extraordinary Session of the Legislature on the 27th day of September, 1920, and took effect on that
day, and the validity of Chapter 136 of the Laws of 1920,
61 which was enacted and took effect on the 1st day of April, 1920, which it amended. Chapter 944 was enacted at an Extraordinary Session of the Legislature duly convened by the Governor on the 20th day of September, 1920. Chapter 944 was recommended for enactment in a report made to the Legislature on the day it convened in Extraordinary Session by a Joint Legislative Committee on Housing, appointed in the month of May, 1919. On the day the Legislature so convened, it received a message from the Governor as follows:

"STATE OF NEW YORK:

Executive Chamber.

Albany, September 20, 1920.

To the Legislature:

I have exercised the power vested in me by the Constitution to call the Legislature into Extraordinary Session because I am convinced that an emergency confronts the State, and because I feel that we cannot wait until the regular session to find remedies for its relief.

In the period of reconstruction, many problems have been pressing for solution which are not ordinary in their nature, but are the direct result of war conditions. None of them has so taxed the agencies of government as the question of proper housing facilities.

In January of 1919, I charged the Reconstruction Commission with the duty of making an exhaustive inquiry into this subject to the end that the legislative and executive branches of the Government might be in a position to deal with this problem, which even at that time promised to be acute. Your Honorable
62 Bodies, believing that facts should be produced upon which to predicate remedial legislation, appointed a Committee from both houses of the Legislature to investigate the subject. This Committee reported at the last session of the Legislature and several legislative proposals arising from their report were enacted into law. It was admitted at the time that they were expedients intended to alleviate the situation temporarily. As we understand legislation, they were entirely regulatory. Two vital objects were overlooked: one, the encouragement of building construction, and second, the adoption of a State policy looking to the future study and development by the State of this all important question of adequate housing facilities.

Experience of several months has revealed to us the weakness of the temporary expedients and had made more acute the necessity for encouragement of building operations so far as it can be done by law, and the creation of State agencies for future use.

We, therefore, at this session, as I see it, have three distinct branches of the subject with which to deal.

First, the strengthening of the temporary statutes enacted at the recent session.

Our temporary laws of last spring have fallen short of what was expected of them and selfishness and greed on the part of not a few landlords *has* brought about an indescribable condition in the Municipal Courts in New York City. I am informed by the President of the Board of Justices of the Municipal Court that there are pending for October first, more notices of dispossess proceedings than were filed during the whole year of 1919—approximately 100,000. The court rooms have been crowded beyond their capacity
63 by tenants seeking relief. These figures of themselves cannot communicate the harassing uncertainty and the misery

caused by the constant repetition of these proceedings. It has been publicly stated by the Health Commissioner of the City of New York that this condition of uncertainty is alone a direct menace to the health and welfare of the community. The housing shortage leaves the citizen nowhere to turn. Families have been broken up and dispersed generally through the city, or crowded and huddled into the homes of relatives until the health, welfare and morality of the community is seriously threatened.

It seems a very great pity that the decent, honest landlord should be obliged to come under a regulation clearly not intended for him, but made necessary by the willful and deliberate profiteer, who would turn this great crisis in our State's history to his personal advantage. The people, to some degree at least, have managed to protect themselves from other forms of profiteering, but they are helpless to deal with this one, because a home everyone must have. Have in mind that no regulatory legislation, properly drafted, will have any disastrous effect upon an honest man. It has been my experience that only those who seek to live outside of the moral law have any great fear of State regulation. The State has a conscience and it will regulate fairly.

Inasmuch as regulation must be exercised through the agency of our courts, it is to existing statutes or the enactment of new ones supplementing them that we must turn our attention.

Landlords have been given the special privilege of summary proceedings in order to regain immediate possession of their premises. This privilege does not belong to any landlord
64 as a matter of inherent right. Inasmuch as the evidence laid before us indicates that summary proceedings are being grievously abused, in a crisis of this kind, the State does only its duty when it withdraws or modifies them.

There is an abundance of evidence that undesirability or failure to pay rent is not in the majority of instances the basis of the application for the writ of summary removal, but on the other hand it is the operation of the profiteer who would remove the desirable and paying tenant in order to create a vacancy which may thereafter be offered to the highest bidder. As a result of this, families have been shifted from place to place without rhyme or reason and the unscrupulous and selfish have profited immensely by it. October first was to be the height of the harvest. The State should step in and use its power to disappoint them.

I believe the emergency to be such that the strong arm of the State must reach through its courts and protect the people for at least one year, until the crisis shall have passed or the situation is relieved. The courts should be empowered where it is evident that the dispossess is requested for the purpose of unreasonable rent-raising, to suspend the dispossess remedy for an adequate period. You might well hold that the courts shall have the power to suspend rent increases and place the burden of proof upon the landlord to show the necessity for the increase or any part of it. No honest man can suffer from such legislation. The court will undoubtedly give its approval to increases that can be justified.

Inasmuch as the personnel of your committee remains the same, I have no doubt that they will be in a position to suggest
65 to you other specific amendments to the existing so-called rent laws; and that they will strengthen them where experience has proven them to be weak.

The second phase of the question before us is how to stimulate building construction. Figures gathered from the most authentic sources indicate that the State is years behind its normal housing accommodations. Between June 1, 1919, and July 1, 1920, in the City of New York, 3,652 individual apartments designed for the same number of families were constructed, but as an offset to that new construction there were demolished or converted for non-residential uses 3,833 apartments, leaving 271 less homes at the end of that period, although the question has been constantly before the public for a year and a half.

The housing shortage is felt not alone in the City of New York but all cities in the State are passing through the same difficulty. In New York City at least 50,000 homes are immediately necessary. It should, therefore, be your chief objective during the Extraordinary Session to encourage, so far as that can be done by law, the building of houses.

The commercial and economic supremacy of the State is threatened by this shortage. No community can expect to achieve an industrial growth if it is unable to house its working population properly. Labor shortage can be frequently attributed to improper housing accommodations. It is only human for a man to want to live where he can rear his family in decency and comfort. If some other State offers him that opportunity it comes into sharp competition with our own State, and good housing is therefore a necessity for the promotion of commerce and industry.

66 The question of stimulating building growth becomes a very practical one because of the fact that the cost of building operations has trebled since 1915. Building at this time is considered an unprofitable field and money will not enter it, nor can it be forced into it by law, but we may be able to offer an inducement to capital to come back into the field and building may be resumed in a natural way if the State can find some way to offset the increased costs.

A very vital element in the carrying cost of a newly constructed building is the taxation to which it is subject. While I do not, as a matter of policy, favor tax exemptions, the emergency is such at the present time that it might be well to consider the enactment of a law exempting from taxation for a period of years, with proper restrictions, buildings used for dwelling purposes whose construction is undertaken within such a period as will assure an immediate increase in housing accommodations. I believe this will aid in putting new construction on a fair competitve basis with buildings erected before the war and will assist in creating a market for new buildings.

Much has been said about the exemption of mortgages from the provisions of the State Income Tax. The State's Tax is very small

and we can give no guarantee of federal legislation along the same line. I therefore, do not place much faith in this suggestion as offering any great remedy. However, your Legislative Committee is in possession of more facts on this subject than I can lay before you.

Loaning institutions apparently have not kept in step with the times and have spent their energy in securing investments bringing a larger return than real estate mortgages. For instance, our
67 Savings Banks and Mutual Insurance Companies are organized not for profit but as depositaries for the people's money, and it would be entirely in keeping with their purpose if their funds were made available to a greater extent to meet the people's needs by investing a larger portion of them in bond and mortgage.

In 1914, there was created by statute a State Land Bank having for its purpose assistance to building and loan associations. Inasmuch as the proceeds from the sale of the bonds of the Land Bank are used for the building of homes, the State should do everything that it possibly can to make the bonds a more desirable purchase. We have already exempted them from the provisions of the State Income Tax, but the abnormal yield at this time from other securities is such as to make them an undesirable investment. It might be well that the State use its own moneys or a portion thereof now in the various sinking funds of the State to purchase these bonds. It might also enable municipalities of the State to invest in such bonds.

These recommendations are made in the hope that the legislation which they suggest will bring voluntary capital into the building market. That, of course, remains to be seen. If the present condition is not thus relieved and the health of the community continues to be menaced, then we have a grave public emergency to meet such as would confront us in a time of epidemic or of catastrophe. Clothed with the proper safeguards the Police power of the state should be extended to municipalities in order that they may be enabled either to build or lend their credit to the building of houses.

Undoubtedly, the State as well as the municipalities should be in a position to extend its credit either through the medium of
68 the State Land Bank or a specially created agency.

There is one avenue of possible direct State aid in an emergency which might be applied at once. The State apparently owns considerable property that was either acquired by escheat or was bought in at tax sales. It might be well to direct the Comptroller either to arrange favorable short term leases or dispose of the property, if it is to be used for housing at such prices as will encourage its development.

It has been called to my attention by the report of the Reconstruction Commission and by hearings held before the Joint Legislative Committee and by private citizens, that the high cost of building materials is artificially stimulated. No doubt, one very vital aid to construction would be the elimination of any combinations to increase the prices of building materials. Investigation of this

situation by an agency of your own creation is, to my mind, highly desirable.

We come now to the third consideration—provision for a permanent housing policy.

The existing accommodations are far from the standards of adequacy that a normal family has the right to expect. I was conscious that the State was facing a problem of housing, both from the fundamental point of view, and from that of the shortage in the supply, when I asked the Reconstruction Commission to study and to suggest a permanent policy for the State in this regard.

The evils of bad housing are only too apparent in New York City—but my study and experience here have shown me that an inadequate standard of housing exists in nearly every city and town in the State. The Tenement House Law has some measure of beneficent effect, but in the smaller communities investiga-
69 tion shows that housing is without even elementary supervision as to safety and sanitation.

Nor is the situation of such recent growth as is popularly supposed. Since we passed the Tenement House Law of twenty years ago, nothing constructive has been done. We rested with that achievement and every attempt to aid in developing a solution for other communities has met with failure.

Any attempts to amend the present Tenement House Law are likely to be viewed with alarm and suspicion if they are aimed at detailed and specific sections of the law. It is, however, probable that the law can be made to fit present conditions if it is applied with greater elasticity. I would, therefore, recommend as an aid to the construction of multi-family homes, that there be created for the tenement house department a board of appeals similar to or identical with the one at present functioning for the building department of the City of New York. If such a board is constituted, deviations from the letter of the law, which make possible new methods of construction, can be carefully considered by such a board and the law be less hampering in its effect.

Building houses for some groups in the population has become an unprofitable business. Hence, these groups have for a generation lived in the left-over housing, or in the cheapest and most poorly-planned type of home that a grudging and unrealizing community would provide. As a result of the present emergency, a still larger portion of our population is being forced back into houses
of a standard below that which we have accepted as decent
70 American homes.

Except for the report of the Reconstruction Commission and the findings of your own committee, we have been aided by no State agency in the consideration of this very important problem. In the enactment of labor laws, we are guided by the Industrial Commission. In the enactment of health measures, by the State Health Department. In matters affecting the conservation of our natural resources, by the Conservation Commission. The Banking Department, the Insurance Department, and other State agencies all deal with special subjects that need executive or legislative action.

But in housing, dealing with the elementary need of shelter and establishing homes, there is no State or local agency to aid the legislative and executive branches of the government either in meeting an emergency, or what is more important, in helping to establish a permanent housing policy for the State. Such a policy does not necessarily mean the building of houses by the State, but it does mean the establishment of housing standards and of local development that should underlie any future growth of the cities of this State.

Granted that Your Honorable Bodies will enact measures to meet the emergency, it is important that you recognize the challenge which these insufferable conditions raise, to establish agencies for providing an enlightened and constantly developing housing policy for the future.

To this end I recommend a law which will create in each community having a population of over ten thousand a local housing board, which shall be charged with the duty of finding a solution for the local housing situation. These local boards should be required to prepare within a period to be determined by the local authorities a plan for the future development of the city and should
71 consider local housing ordinances. A State agency should be created and the local Boards should be required to report to it at stated intervals so that there may be available at all times a body of information applicable to this subject.

The State agency, on the other hand, should first of all be directed to report to the next Legislature on a method for the development of a system of State credits for housing purposes. Through the State agency information should be made available to Local Communities that will aid them in their housing program.

These agencies, both State and Local, should be unpaid, but so far as the State agency is concerned, adequate appropriation for its expenses should be made.

This is the time for action. We are confronted with a real problem of reconstruction. Shall we remain in the dark ages of inadequate and un-American housing, endangering the health and morals of future generations of our citizenship? Or shall we go forward with the times, and enter the new era of our democracy with an enlightened interest in the fundamental needs of our cities and our citizenship for well-planned communities that serve the industrial, commercial and social needs of the people, and homes that make for a stabilized, self-respecting, wholesome family life.

If this is accomplished, the sufferings caused by the housing crisis will not be without their compensation. The permanent fruits of this emergency should be written on the record which this State has made for progressive laws affecting human needs. It takes a serious emergency to bring a realization of deficiencies. The op-
72 portunity is yours to remedy them.

(Signed) ALFRED E. SMITH."

Louis Marshall, of Counsel (Lewis M. Isaacs with him on the brief), for Appellant.

Rose & Paskus, Attorneys for Respondent.

William D. Guthrie and Julius Henry Cohen, Special Deputy Attorneys-General, for the Attorney General.

Elmer G. Sammis and Bernard Hershkopf, Counsel for the Joint Legislative Committee on Housing, as amici curiæ.

LAUGHLIN, *J.*:

The statement of the facts shows the existence of a shortage of housing accommodations resulting from the increase of the population and the practical suspension of building during the World War presenting a situation threatening danger to the public health, safety and order, and calling upon the Legislature for the enactment of any emergency legislation which it was competent for it to enact to relieve the crisis and to prevent its recurrence until the emergency passed. If it was within the power of the Legislature to enact these statutes, they must be sustained, for it is not the province of the court to review the exercise of the legislative discretionary power. It is, however, proper to observe that there is no just ground for criticising this legislation provided it is constitutional. The subject matter was thoroughly investigated and the Executive and the Legislature evidently attempted in devising and applying remedies
73 to protect the interests of the landlords as well as tenants so far as that could be done consistently with the public welfare.

Said Chapter 136 is a act relating to defenses in an action based on unjust, unreasonable, and oppressive agreements for rent of premises occupied for dwelling purposes in cities of the first class and in cities in a county adjoining a city of the first class. It recites that unjust, unreasonable, and oppressive agreements had been and were being exacted from tenants under stress of prevailing conditions impairing the freedom of contract, resulting in a congestion of housing conditions seriously affecting and endangering the public welfare, health and morals, presenting a public emergency, and provides that it shall be a defense to an action for rent accruing under an agreement, that the rent is unjust and unreasonable and that the agreement is oppressive; but hotels, lodging and rooming houses are excepted therefrom. Section 2 creates a presumption that the agreement is unjust, unreasonable and oppressive if the rent has been increased more than 25 per cent. over that exacted one year before the agreement was made. Section three permits the plaintiff in such an action or in a separate action to plead, prove and recover a fair and reasonable rent.

Chapter 944 amends Chapter 136 by re-enacting Section One, re-enacting Section Two as Section Three with an amendment applying the presumption to any increase of the rent over the year before, and re-enacting Section Three as Section Four, and by adding seven other sections and by providing that the provisions of that chapter shall continue in force until November 1, 1921, whereas the
74 other was to continue until November 1st, 1922. The new provisions of the chapter provide in Section Two that where

the defense that the rent is unjust and unreasonable and that the agreement is oppressive is interposed, the plaintiff shall file a verified bill of particulars giving the gross income from the building, the number of apartments and of rooms in each, the number of stores, the rent received for each apartment or store for the preceding year, the consideration paid by the landlord for the building or, if he be a lessee, the rent agreed to be paid by him, the assessed valuation and taxes for the current year, the annual interest charge on any incumbrance, the operating expenses in reasonable detail and such other facts as the landlord claims affect his net income from the property, and that if he fails so to do, the complaint may be dismissed. Section Five provides that if the plaintiff in an action for rent or rental value recovers judgment by default and it is not satisfied within five days after entry and service of a copy, the plaintiff shall be entitled to possession of the premises and to a warrant for possession. Section Six provides that if in such an action the defendant interposes the defense of unfairness and unreasonableness of the amount demanded he must, at the time of answering, pay into court an amount equal to the rent paid during the preceding month or the amount agreed upon as the monthly rent by the agreement under which he entered, and that if he fails so to do, the defense shall be stricken out and that any deposit so made shall be applied on the judgment or otherwise as justice requires, and if the plaintiff recovers, the judgment shall provide that if it be not fully satisfied from the deposit or otherwise within five days after entry and service of copy, plaintiff
77 shall be entitled to possession and to a warrant therefor.

Section Seven provides, among other things, that where the court has jurisdiction to vacate a judgment by default, it shall have power to open a default in such an action and to amend and correct process and to grant a new trial. Section Eight forbids a stay on appeal unless the defendant pays into court the amount of the judgment and monthly thereafter an amount equal to one month's rental on the basis of the judgment, and that such money shall be paid to the plaintiff. Section nine excepts hotels of 125 rooms or more, lodging and rooming houses occupied under a hiring of a week or less. Section Ten excepts new buildings in the course of construction and those commenced thereafter. An explanatory note to this section by the Joint Legislative Committee states that the 25 per cent. increase clause in the former section was omitted because generally misunderstood by the public and misapplied by the courts and that the new act puts the burden of proof with respect to the rent being just and reasonable on the landlord, if the rent has been raised, and that this was done because otherwise the tenant would be at a disadvantage and unable to meet the landlord's claims with respect to expenses. It is also stated that the purpose of the act was to prevent a landlord from obtaining an increase of rent without bringing an action and having the court determine whether the rent demanded is fair and reasonable and that the trial may be by the court or by a jury if either party so desires, and that the provision requiring the tenant to pay into court was to protect the landlord against irresponsible tenants, and that the landlord is fully protected by giving

him possession if the amount recovered is not paid promptly,
70 and that it was believed that the rights of both parties were fully protected by this act.

Chapter 945 was enacted on the same day as 944. It amends subdivision 2 *a* of Section 2231 of the Code of Civil Procedure, which was added by Chapter 139 enacted on April 1, 1920. Chapter 139 limited until November 1, 1922, the remedy by summary proceedings in cases of the first class and in a city in an adjoining county, under a lease or tenancy for one year or less or under any future lease, to cases wherein the petitioner alleged and proved that the rent was no greater than the amount paid by the tenant for the month preceding the default or had not been increased more than 25 per cent. over the rate one year before, but hotels, lodging and rooming houses were excepted. Chapter 945 further limited for the period therein specified the remedy by summary proceedings for the non-payment of rent by confining it to cases in which the petitioner alleged and proved that the rent demanded was no greater than the amount for which the tenant was liable for the preceding month, but permitted the tenant to defend on the ground that the rent was unjust and unreasonable and that the agreement was oppressive, and where that defense was interposed required the landlord, on pain of having his proceeding dismissed, to file a bill of particulars to the same effect as is required by Chapter 944, but it excepted hotels of 125 rooms or more and lodging and rooming houses occupied under hire of a week or less and buildings in the course of construction and those thereafter commenced. The Joint Legislative Committee's note to this chapter shows that it was intended to confine the landlord to his
75 remedy by an action for rent if he claimed more than the amount for which the tenant was liable for the preceding month.

The remedy by summary proceedings is statutory and it was competent for the Legislature to withdraw it altogether or to limit it as it did. The legislation so limiting the remedy by summary proceedings left the landlord claiming the benefit of an agreement for an increased rent to an action such as this, if he did not wish to elect to accept rent for an amount no greater than the amount paid by the tenant for the month preceding the default and to have recourse to summary proceedings for the removal of the tenant for non-payment thereof.

Chapter 136 was construed as not applying to existing leases but only those thereafter made (Paterno Investment Corp. v. Katz, 142 Misc., 242, affirmed without opinion 185 N. Y. S., 944). Counsel for the appellant contends that Chapter 944 is unconstitutional and void both as to future and existing leases. I am of opinion that we are not called upon to decide whether the new provisions of Chapter 944 which are not a re-enactment of the provisions of Chapter 136 would be constitutional if construed retroactively as applying to existing leases, for the lease in the case at bar was made after the enactment of Chapter 136, although before the enactment of Chapter 944; and Chapter 136 authorized the defense that the rent reserved by the agreement was unreasonable and oppressive, and the plaintiff in

making the lease was chargeable with knowledge of those statuto
provisions. Chapter 944 merely enlarged and extended the provisio
of Chapter 136 by creating a presumption that the agreement is u
just, unreasonable and oppressive where the rent has been
78 creased over the rent of the year before. That is merely
rule of evidence, and ordinarily it is competent for the Leg
lature to change the law of evidence and procedure and apply t
statute to existing contracts, but the validity of that part of t
statute or of the provisions thereof making it the duty of the landl
to file a bill of particulars is not presented for decision. Plainti
motion for judgment on the pleadings could not be granted unl
the answer contains no defense. It does, however, contain the
fense authorized by Chapter 136 and reenacted in Chapter 944, t
the agreement with respect to rent was unjust, unreasonable and
pressive. Regardless, therefore, of the new rule of evidence
tempted to be prescribed by Section 944 or of the provisions of t
act with respect to a bill of particulars, the issue presented un
either statute is the same and it is as to whether the rent exacted
reasonable. The point now presented for decision is, therefore,
same as if the lease had been made after the enactment of b
statutes. The landlord stands on the lease and the tenant rests
the statutory defense that the rent reserved is unreasonable and
pressive. The lease having been made after the Legislature auth
ized this defense, both parties are bound by the law with respect to
term of the lease; and if the statute be unconstitutional, the landl
may recover according to the agreement, but if it be constitutio
he may only recover the reasonable rental to be determined by
Court or by a jury if either party demands a trial by jury.

The only remaining point to be considered is whether, in
circumstances of the emergency, by which there was and would
until new houses and apartments were built this serious sh
79 age of housing accommodations, the owners of existing hou
tenements and apartments which, in the City of New Y
are occupied by far the greater part of the inhabitants as tenants,
a constitutional right to take advantage of their tenants and of oth
desiring accommodations and exact exorbitant rentals free from
exercise of any legislative regulation or control, or whether it
competent for the Legislature thus summoned in Extraordinary
sion by the Executive, and fully advised with respect to these co
tions, to apply this remedy to promote the general welfare and
serve the public health, safety and order, not by taking posses
of private property either for public or private purposes but by li
ing during the period of the emergency such owners who saw fi
lease their premises to the recovery of reasonable rentals.

The learned counsel have presented able and elaborate argum
and briefs covering nearly the entire field of judicial decisions
respect to the validity of statutes enacted in the exercise of the po
power, the scope and limits of which the courts have wisely refra
from attempting to define. I deem it unnecessary to discuss the
thorities at length and shall refer only to those sufficiently analog
on the facts to light our way to a correct decision. That such e

cise of the police power has never before been attempted in this jurisdiction does not prove that it does not exist. That has often been declared (Krojek v. Goldman, 150 N. Y., 146-8; 1 Kent, 477; also German Alliance Insurance Co. v. Kansas, 223 U. S., 389; see also Cooley on Torts, 13-15). Although the State Con-
80 stitution forbids the taking of private property for public use without just compensation (Article I, Section 6) and thereby impliedly forbids such taking for private use, and both the State and Federal Constitution provide that no person shall be deprived of life, liberty or property without due process of law, and the Federal Constitution affords all the equal protection of the laws (State Constitution, Article I, Section 6; Federal Constitution, 14th Amendment), yet it is well settled law that these provisions permit, for the public welfare, safety and health, the regulation of the use of private property and the regulation of the liberty of contract to an extent seriously affecting the use and value of property and at times destroying it and materially limiting and restricting the making of contracts (Lincoln Trust Co. v. Williams Building Corpn., 229 N. Y., 313; Cockcroft v. Mitchell, 187 App. Div., 189, 194; Stone v. New York, 25 Wendell 157; New York v. Lord, 17 Wendell 285; 2 Kent's Comm., 339). The owner of real estate in a densely populated area may lawfully be precluded from building thereon until plans in compliance with laws and regulations deemed necessary for the public health and safety have been filed and approved, and even after building according to existing laws the owner, while devoting his building to a particular private use, may be required to make changes and alterations therein deemed necessary for like purposes, no matter how burdensome, and his only alternative is to discontinue the use (Health Dept. v. Rector, 145 N. Y., 32; Tenement House Dept. v. Moesden, 179 N. Y., 325). So too, an owner of private property who devotes it to a use in which there is a direct public interest, such as storing and elevating grain or conducting a warehouse or an inn,
81 subjects such use of his property to the police power of the State with respect to regulations fixing the charge to be made for the services rendered and the accommodations furnished (Munn v. Illinois, supra; Budd v. New York, 143 U. S., 517; affirming 117 N. Y., 1; Brass v. Stoser, 153 U. S., 391; Nash v. Page, 80 Ky., 539; Girard Storage Co. v. Southwark Co., 105 Pa. St., 248). One of the grounds recognized in the decisions cited for the intervention of the state through its police power is that such owner or owners have a monopoly of the business and without such regulation might exact unjust charges. The scope of the decision in Budd v. New York, supra, is emphasized by the fact that Justice Brewster dissented in a vigorous opinion, concurred in by Justices Field and Brown, and took the point that the power to regulate should be limited to monopolies of law, as where exclusive privileges are granted, and should not be extended to monopolies of fact, which may be broken at will by others, and he cites as an illustration, the erection of an office building which may give for the time being a monopoly of the business but which may be broken by others, and in such case, he was of opinion that it would not be competent for

the Legislature to regulate the rentals to be charged. It is quite conclusive, I think, that there may be a monopoly of housing conditions and the Legislature had before it facts presenting a collective monopoly of housing accommodations in an emergency, from which no relief could be afforded through breaking the monopoly by new buildings for a considerable period of time, and where the landlords, although not shown to be acting in concert, were quite generally taking advantage of tenants and thereby presenting an intolerable condition if the owners were to be left free to exact exorbitant
52 rentals. It is not, however, necessary now to decide whether it would be competent for the Legislature at any and all times to regulate leasing on the theory that the leasing of houses, tenements and apartments to the extent that it is carried on in the great city, where comparatively few own their own homes, constitutes an appropriation of the buildings to a use in which the public is so directly or intimately interested as to warrant its regulation in ordinary times, for that has not been attempted. During the continuance of the emergency I think it was competent for the Legislature so to regulate it. No one questions the validity of the usury laws, which have existed from time immemorial for the purpose of preventing oppression by money lenders who, without regulation by statute, could take advantage of the necessities of those desiring the use of money and exact exorbitant amounts therefor. Those laws are, I think, analogous to that now before the Court, which was enacted for the purpose of preventing similar oppression by those who during the emergency have many applications for leases, not only from residents of the State whose welfare is its especial concern, but competing non-residents, and are in a position to exact and to exact unreasonable rentals, and are thus taking advantage of those who have no homes of their own and are obliged to submit to their exorbitant demands, for they are not free to contract because everywhere they turn for shelter they are met with like exorbitant demands. This, I think, is a matter of great public concern warranting the intervention of the Legislature, which of course cannot compel the owners to open their doors and admit
53 those who are without homes, for that would be a taking of the property, but it may, I think, provide that for the period of the emergency so long as they see fit to lease their property and enjoy the protection of the state, they must deal justly with their tenants. In C. B. & Q. R. R. Co. v. McGuire (219 U. S. 549), a statute of Iowa prohibiting contracts between a railroad and its employes limiting the liability for injuries in advance of the injury and providing that the subsequent acceptance by the employee of the benefits of the contract should not constitute satisfaction of the claim, was sustained as a valid exercise of the police power, not on the theory that State control over the corporation was reserved by its charter but on the ground that it was not an undue interference with the liberty of contract preserved by the 14th Amendment. In that case the Court said: "The Legislature has necessarily a wide field of discretion in dealing with the relation of employer and employee in order that there may be suitable protection of public health, safety

and peace and good order, through regulations designed to insure wholesome conditions of work and freedom from oppression." The use of the police power for the promotion of harmonious relations between capital and labor engaged in a great industry was assigned in McLean v. State of Arkansas (211 U. S., 539), as the ground for sustaining a state statute requiring that in determining the wages of miners, coal should be measured before being screened. The Court there, after citing many decisions, said, "It is then the established doctrine of this Court that the liberty of contract is not universal and is subject to restrictions passed by the legislative branch of the government in the exercise of its power to protect the safety,
84 health and welfare of the people." The Court also placed emphasis on the fact that disputes and controversies between employers and employees were constantly arising and had been brought to the attention of the Legislature. In Knoxville Iron Co. v. Harbinson (183 U. S., 13), a state statute requiring all employers to redeem in cash store orders issued in payment of wages was sustained as a proper exercise of police power. In that case, the United States Supreme Court quoted with apparent approval from the opinion of the Supreme Court of Tennessee to the effect that the statute tended toward equality between employer and employee in the matter of wages and was "intended and well calculated to promote peace and good order and to prevent strife, violence and bloodshed," and that therefore without regard to the state's reserved power over corporate employers, it was valid as a general regulation with respect to individual employers as well, and as a whole-some regulation adopted in the proper exercise of the police power. The Court there cited Holden v. Hardy (169 U. S., 366), as sustaining the validity of a statute regulating employment of workingmen in underground mines and fixing their hours of labor, on the grounds that it was a valid regulation of the right to contract and not class legislation, and that it did not deprive the parties of the equal protection of the law or abridge the immunities of the defendant as a citizen or deprive him of his property and liberty without due process of law, and was a valid exercise of the police power. The Court then cites Orient Insurance Co. v. Daggs (172 U. S., 557), where a state statute providing that in an action on an insurance policy for loss or
85 damage by fire, the insurance company should not be permitted to deny that the property insured was worth at the time the policy was issued, the full amount of the insurance, was sustained as a valid limitation upon the right of contract notwithstanding the fact that the parties had contracted otherwise. In Frisbie v. United States (157 U. S., 160), the Court held that the liberty of contract preserved by the Constitution is not absolute and universal and may in many instances be regulated and limited, and although in that case, the point presented for decision was with respect to the validity of a statute limiting the charges of a pension attorney, the opinion was not confined to the power of the Congress with respect to pensions. In Sawyer v. Davis (136 Mass., 239), where the ringing of bells and the sounding of gongs and whistles in a factory had been duly enjoined as a nuisance and was thereafter

authorized by statute, it was held that the statute was a proper exercise of the police power and that it superseded the decision as between the parties. The Court there express the opinion that the Legislature could not deprive a party of a vested right to recover damages for prior injuries or the damages or costs awarded by an existing judgment, but that the Legislature might declare for the future "in what manner a man may use his property or carry on a lawful business," subject only to the limitation that the law must be reasonable and for the public welfare, and that the very purpose and object of the exercise of the police power is to change the rights of citizens as they previously existed, and that rights of citizens accruing after the statute are to be governed by it, but not rights which have accrued. The New York Workmen's Compensa-
86 tion Law materially interferes with and regulates the making of and liability under private contracts, and its validity was challenged as in violation of the freedom of contract guaranteed by the Federal Constitution, although the statute was authorized by the State Constitution, but it was sustained as constitutional (New York Central R. R. Co. v. White, 243 U. S., 188. In Neilson v. New York (243 U. S., 332), an act of Congress fixing temporarily the wages to be paid by carriers to certain classes of employees with whom the carriers had been unable to agree and who threatened to strike, which would have interrupted interstate commerce and might have resulted in public disorder, was sustained notwithstanding the fact that it was conceded that the Congress had no power to regulate such wages permanently. That decision supports anticipatory legislation by holding that it is not necessary for the legislative body to await the crisis which would authorize it to act but may act in advance to avert a crisis.

In German Alliance Insurance Co. v. Kansas (223 U. S., 389), a state statute regulating the rates to be charged for fire insurance under private contracts was sustained as within the police power of the State, on the theory that the business was sufficiently "clothed with a public interest" to subject it "to be controlled by the public for the common good," and although the business was lawful, requiring no license, and the parties were free to contract or not, still the statute was not in violation of the 14th Amendment to the Federal Constitution guaranteeing the liberty of contract. In
American Coal Mining Co. v. The Special Coal and Food
87 Commission of Indiana, et al. (— Fed. Rep. —), the United States District Court for the District of Indiana, three judges sitting, on September 6, 1920, sustained a law authorizing a commission to fix reasonable prices to be charged for coal as a valid police power regulation, although it operated on coal theretofore mined as well as coal to be mined in the future, for it affected all sales thereafter made. That case is merely cited to show the trend of modern decisions, but it is unnecessary to go to that extent in the case at bar.

That the police power may be exercised with respect to new conditions where the public interests require it, and that a state may itself directly use public funds collected by taxation, or authorize a

municipality to use them in a manner encroaching upon what has heretofore been recognized as purely private enterprises, is shown by the decisions in Green v. Frazer (253 U. S., 235), where legislation authorized by the Constitution of North Dakota, by which the State engaged in the banking business, in erecting and operating warehouses, elevators and flour mills, and in constructing and renting homes for its inhabitants, was sustained as not contravening the 14th Amendment, prohibiting the taking of property for taxes without due *process* of law; and in Laughlin v. City of Portland (111 Me., 286), and James v. City of Portland (113 Me., 123, aff'd 245 U. S., 217), where it was held that a city could be constitutionally authorized to buy for and sell to its inhabitants wood and coal during an emergency, and in Holton v. City of Camilla (153 Ga., 360), where it was held that a city could be empowered to establish a municipal ice plant for its inhabitants.

It is to be borne in mind that there has been no attempt to
88 compel landlords to make leases, and so far as this statute, construed not retrospectively but prospectively, as I am construing it, is concerned, they are at liberty to discontinue using their property for the housing accommodations of others. The Legislature has provided merely that so long as they continue to use their premises during the period of the emergency, they must not take advantage of the houseless and, by leasing to the highest bidder, accommodate non-residents perhaps to the exclusion of citizens of this State, and unduly oppress residents of the State, who by duress of the circumstances may be obligated to agree to unconscionable, oppressive and extortionate leasing contracts. Doubtless the Legislature apprehended that the legislation enacted at the Extraordinary Session would be attacked as unconstitutional, and the legislators may have anticipated that possibly some of the other statutes might not be sustained. It did, I think, however, exercise great foresight in framing the statute in question for, if it be sustained as constitutional, it will in its practical operation remedy, if not fully, practically every evil that it was anticipated would follow if the execution of the laws as they theretofore existed were permitted. It is manifest that the legislation was designed to avert the crisis incident to the shortage of housing accommodations that might have been brought on if hundreds of thousands of the inhabitants of this great metropolis were evicted and unable to find living accommodations and also to prevent profiteering landlords from taking advantage of the emergency, which left their business of leasing their property for such uses substantially without competition and left them in a position where they could exact unreason-
89 and unconscionable and extortionate rentals for the use of their property, while they were protected by the usury laws from having to pay more than six per cent on any loan of money that they had obtained or might obtain on the security of their premises. By restricting landlords to making contracts for reasonable rentals during the period of the emergency, the Legislature left nothing to be accomplished by the substitution of one tenant for

another who was evicted, for all agreements for rentals thereafter made whether with tenants in possession or with new tenants were required to be reasonable. Assuming, without now deciding, that the other laws enacted at the same time, which were designed to prevent the wholesale eviction of tenants, were unconstitutional and that the landlords were at liberty to evict at the expiration of the term or to recover possession by electing to terminate the tenancy for a failure to pay the rentals agreed to be paid—there was left to the landlords no incentive to carry out their threats of wholesale evictions, provided the statute now under consideration was sustained as constitutional; and therefore, even on the assumption stated, the evictions would be reduced to a minimum. In ordinary times, doubtless the making of leases may well be and should be left to the regulation of the law of supply and demand; but in this emergency there was not freedom of contract on the part of the tenants and they were subject to extortion and oppression by landlords. It is, I think, no extension of the doctrine of the authorities cited with respect to the power of the Legislature to forbid during this emergency the exacting of oppressive agreements for extortionate rentals by prohibiting the recovery of more than reasonable rentals.

90 The statute is also attacked on the ground that it fails to prescribe a standard by which what constitutes a reasonable rental may be decided. The Legislature might have provided that a landlord should not exact a rental by which he would receive more than a specified percentage on his investment, but if that percentage were fixed too low, the statute would be open to attack on the ground that it was confiscatory, and whether it would be sustained as constitutional or annulled as unconstitutional would then have to be determined by the very standard prescribed in this statute, namely, whether it permitted the landlord to receive a reasonable income on his investment (Willcox v. Consolidated Gas Co., 212 U. S., 19; Des Moines Gas Co. v. Des Moines, 238 U. S., 153; Municipal Gas Co. v. Public Service Comm., 225 N. Y., 59).

The Federal Lever Food Control Act, so called, declared it to be unlawful for any person to make an unjust or unreasonable rate or charge in handling or dealing with any necessities or to combine with others to effect excessive prices for necessaries and, like the statute in question, it prescribes no other standard. The Circuit Court of Appeals, 2nd District, on May 26th, 1920, in C. A. Weed Co. v. Lockwood (265 Fed. Rep., 785), sustained a conviction under that statute and overruled the point that it prescribed no standard, which is the precise point now made here.

It is further contended that the statute is void on the ground that it is unjustly discriminatory, in violation of the provision of the 14th Amendment of the Federal Constitution. The statute is confined to property devoted to the same use and it embraces all such property and applies only to the property, the use of which

91 during the emergency required the intervention of and regulation by the Legislature, and therefore it cannot be said that it is unconstitutional on this ground (Budd v. New York, supra

People v. Havnor, 149 N. Y., 195, 205; Mutual Loan Co. v. Martell, 222 U. S., 225, 235).

It follows that the order should be affirmed with $10 costs and disbursements.

Merrell and Greenbaum, JJ., concur.

Clarke, P. J., and Dowling, J., dissent.

Dissenting Opinion.

CLARKE, *P. J.* (dissenting):

Recognizing that the Courts have never yet laid down the limitations of the police power, all of the cases which I have been able to examine dealing with the subject make that power subject to the Constitution. In my judgment, the acts under consideration in these cases violate the fundamental principles of the State and Federal Constitutions, in that the result is either to take private property for public use without due compensation, which is not permissible, or to take private property for private use, which has never been allowed. They also, in my judgment, have the effect of depriving the owners of a certain class of property of due process of law, and destroy the fundamental right of private ownership in property, which has heretofore been sedulously protected by the Courts under constitutional provisions, and take away the freedom of contract in regard to specific property within a limited territory, to wit, real estate used for dwelling purposes in the City of New York.

Realizing that these questions should be submitted as speedily as possible to the Court of Appeals, and that so much has been
92 written by so many courts, I content myself with this brief expression of dissent, and of my agreement in the views of Mr. Justice Blackmar, in his more extended discussion of the subject in People ex rel. Rayland Realty Co. vs. Fagan (N. Y. Law Journal, Dec. 9, 1920).

Stipulation Waiving Certification.

It is hereby stipulated, pursuant to Section 3301 of the Code of Civil Procedure, that the foregoing consists of true and correct copies of the Notice of Appeal to the Court of Appeals, of the order appealed from and of the papers upon which said order was founded and upon which the Court below acted in this proceeding in making said order, and of the whole thereof, and now on file in the office of the Clerk of the County of New York, and certification thereof by the Clerk of said County, as required by section 1353 of the Code of Civil Procedure, is hereby waived.

Dated New York, January 4th, 1921.

M. S. & I. S. ISAACS,
Attorneys for Plaintiff-Appellant.
ROSE & PASKUS,
Attorneys for Defendant-Respondent.
CHARLES D. NEWTON,
By W. D. GUTHRIE,
Attorney General, State of New York.

93 Form 932.

Appellate Division of the Supreme Court, First Judicial Department.

EDGAR A. LEVY LEASING CO., INC., Plaintiff-Appellant,

vs.

JEROME SIEGEL, Defendant-Respondent.

Clerk's Office, New York County.

I, Alfred Wagstaff, Clerk of the Appellate Division of the Supreme Court in the First Judicial Department, do hereby certify that the foregoing copy Remittitur from Court of Appeals has been compared with the original thereof filed in this office on the 24th day March, 1921, and that the same is a correct transcript thereof, and of the whole of the said original.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court in the County of New York, this 4th day of April, 1921.

[Seal of the Appellate Division of the Supreme Court.]

ALFRED WAGSTAFF,
Clerk.

(Here follows reproduction of opinions in cases of Guttag vs. Shatzkin, Edgar Levy Leasing Co. vs. Siegel, and People of New York ex rel. Durham Realty Co., etc., marked pages 93½ and 94.)

New Yo

VOLUME 64—NO. 135. NEW

BAR ASSOCIATION LECTURES.

The twelfth of the series of twe y lectures and conferences on legal topics will be on March 17, 1921, at 8:15 P. M. sharp, at the house of the association, o. 42 West Forty-fourth street.

Subject: The Workmen's Compensation Act of New York State.

LANDLORD AND TENANT.

Constitutional Law—Police Power of the State—Emergency "Rent Laws" of September, 1920, Upheld as Valid and Constitutional—Sweeping Decision on Legislative Powers.

COURT OF APPEALS.

Decided March 8, 1921.

PEOPLE OF THE STATE OF NEW YORK ex rel. DURHAM REALTY CORPORATION, appellant, v. EDWARD B. LAFETRA, a Justice of the City Court of the City of New York, respondent.

PEOPLE OF THE STATE OF NEW YORK ex rel BRINTON OPERATING CORPORATION, appellant, v. EDWARD B. LA FETRA, a Justice of the City Court of the City of New York, respondent.

Appeal by relator in each case from order of the Appellate Division, First Department, affirming as matter of law an order of Special Term which denied a motion for a peremptory mandamus requiring the defendant to issue a precept for the eviction of a holdover tenant from relator's premises.

George L. Ingraham for appellant.

William D. Guthrie and Julius Henry Cohen on behalf of the attorney-general (Elmer G. Sammis and Bernard Herskoff of counsel for the Joint Legislative Committee on Housing with them on the brief).

John P. O'Brien, corporation counsel (John F. O'Brien of counsel), for respondent.

Alexander C. McNulty for Real Estate Board of New York, intervenor.

Leonard Claber for Battery Realty Company, intervenor.

Chapters 942, 944 and 947 of the Laws of 1920, enacted at the extraordinary session of the Legislature convened in September 1920, to deal with the emergency in the housing situation in Greater New York, are constitutional.

They do not impair unlawfully the obligations of contracts, nor deprive the landlord of his property without due process of law, nor do they take private property for private use without due compensation.

The statutes are part of a comprehensive legislative scheme, and to uphold the landlord's right to maintain ejectment would disrupt the legislative design.

Emergency laws in time of peace, while uncom-

rk Law Journal.

RK, TUESDAY, MARCH 15, 1921—FOURTEEN PAGES. PRICE FIVE CENTS.

dy averaging four or five persons, emand for homes thus became in of the supply; the landlords took tage of the situation to exact, unheals of eviction, whatever exnt rents the necessities of the occawould bring forth; tenants offered elves who would submit to such desrather than take the chance of g other places of abode. The Legisbad investigated the situation gh the agency of its joint committhe governor had called the Legislin special session to deal with the although at its regular session il it had passed what are known as pril Housing Laws, dealing with the subject, which had failed substanto relieve the existing conditions. the inadequacy of housing facilin cities had become a matter of -wide concern, in the closely settled polis it was a problem of the utmost ty, calamitous in its possibilities. Legislature, unequal to the task of g for all, decided to make the tenin possession a preferred class by ng until November 1, 1922, all proings to dispossess them, except for as hereinafter stated, so long as they a "reasonable rent," which is the used for a statutory charge for use occupation, to be ascertained judicialrough a method provided by the stat-

e owners of dwellings, including tment and tenement houses (but exng buildings under construction in ember last, lodging houses for transiand the larger hotels), were therewholly deprived until November 1, , of all possessory remedies for the ose of removing from their premises tenants or occupants in possession the laws took effect, except where person holding over is shown to be ctionable or the landlord seeks to py the premises as a dwelling for himand family, or intends to demolish buildng and construct a new buildor has sold to a co-operative ownerplan corporation, providing such tenor occupants are ready, able and willto pay a reasonable rent or price for use and occupation. The presumpis created that any demand for rent ter than that in any year prior to demand is unreasonable and oppres-. The landlord may not evict the statry tenants although they remain as to depart as they were prior to etment of the housing laws. To acplish this purpose the Legislature first cted chapter 942 to amend the Code Civil Procedure in relation to summary eedings, which recited that, a public ergency existing, no summary proceedgs should be maintained until the first of November, 1922, to recover possession [illegible] the rate of interest on [illegible]

N. Y., 22). But chapter 947 also prohibits the landlord for two years from maintaining an action to recover possession of his real property at the expiration of the term, and any law which in its operation amounts to a denial or obstruction of rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the constitution (McCracken v. Hayward, 2 How. U. S., 608, 612; Barnitz v. Beverly, 163 U. S., 118, 125). A reasonable alteration of the remedy which does not materially impair it is constitutional (Penniman's case, 103 U. S., 714). The state has, however, made no contract to continue in force the existing possessory remedies in their entirety, nor have the parties so stipulated in their contract. Possessory actions having been for the time done away with, to the extent indicated the action for rent is preserved by chapter 944, but "it shall be a defense to an action for such rent that the rent is unjust and unreasonable." No tenant is forced out of his home so long as he pays the fair monthly rent, but a dispossess warrant may be issued if he fails to pay. A comprehensive substitute for the possessory remedies thus becomes the keystone of the arch.

To uphold the right of the landlord to maintain ejectment would be to crack the legislative design into fragments, which would afford little protection to the tenants in possession. The explanation accompanying the bill (chapter 947), which withdraws the remedy of ejectment until November 1, 1922, says: "The summary proceeding of holdover being taken away, the landlord can bring an action in the Supreme Court and recover judgment against the tenant by default in twenty days *and thus defeat the purpose of the legislation abolishing holdovers except in three instances. To obviate this difficulty* chapter 947 is enacted." Although the separation of the component parts of the general plan into independently numbered statutes signifies the legislative design to save each part that is in itself good on constitutional grounds, chapters 942, 944 and 947 will, if possible, be construed together and given a conjunctive effect before the court goes to the easier task of considering chapter 942 alone. So taken, the argument against their constitutionality as a whole are in form the familiar objections which are addressed to the court whenever the exercise of legislative power on private rights is in question. Their force depends upon their application to the particular case.

The proposition is fundamental that private business may not be regulated, and may not be converted into public business by legislative fiat (Producers' Transp. Co. v. RR. Comm., 251 U. S., is with this condition and not with economic theory that the state has to deal in the existing emergency. The distinction between the power of eminent domain and the police power is often fine. In the main it depends on whether the thing is destroyed or is taken over for the public use. If property rights are here invaded, in a degree compensation therefor has been provided and possession is to be regained when such compensation remains unpaid. What is taken is the right to use one's property oppressively, and it is the destruction of that right that is contemplated and not the transfer thereof to the public use. The taking is therefore analogous to the abatement of a nuisance or to the establishment of building restrictions, and it is within the police power.

Emergency laws in time of peace are uncommon but not unknown. Wholesale disaster, financial panic, the aftermath of war (Hamilton v. Kentucky Distilleries & W. Co., 251 U. S., 146, 161), earthquakes, pestilence, famine and fire, a combination of men or the force of circumstances may, as the alternative of confusion or chaos, demand the enactment of laws that would be thought arbitrary under normal conditions (Bowditch v. Boston, 101 U. S., 16, 18, 19; Am. Land Co. v. Zeiss, 219 U. S., 47). Although emergency cannot become the source of power, and although the constitution cannot be suspended in any complication of peace or war (Ex parte Milligan, 4 Wall., 2), an emergency may afford a reason for putting forth a latent governmental power already enjoyed but not previously exercised. Thus it has been held that although the relation between employer and employee is essentially private so far as the right to fix a standard of wages by agreement is concerned, Congress may establish a standard of wages for railroad employees to be in force for a reasonable time in an emergency to avert the calamity of a nation-wide strike (Wilson v. New, 243 U. S., 332, 348; Ft. Smith & W. R.R. v. Mills, 253 U. S., 206).

Even in the absence of an emergency the state may pass wholesome and proper laws to regulate the use of private property (Lincoln Trust Co. v. Williams Bldg. Corp'n, 229 N. Y., 313; St. Louis Poster Advertising Co. v. City of St. Louis, 249 U. S., 269). Laws restricting the uses of property do not deal directly with the question whether a private business may be limited in its return to a reasonable rate fixed by a force external to the law of supply and demand. Aside from the war power, the regulation of prices, except for public utilities, is unusual, although usury statutes which forbid the taking of exorbitant interest on the loan of money are common. The power of regulation exists, however, and is not

invited by its conduct. One class of landlords is selected for regulation because one class conspicuously offends; one class of tenants has protection because all who seek homes cannot be provided with places to sleep and eat. Those who are out of possession, willing to pay exorbitant rentals or unable to pay any rentals whatever, have been left to shift for themselves. But such classifications deny to no one the equal protection of the laws. The distinction between the groups is real and rests on a substantial basis (People v. Beakes Dairy Co., 222 N. Y., 416).

The next question is whether such laws impair the obligation of contracts, as applied to existing leases and tenancies which contain an express or implied obligation to surrender possession at the expiration of the term or as applied to a case where it is claimed that the parties had contracted or stipulated between themselves in dispossess proceedings that the warrant should be issued on October 1. The provision of the federal constitution that no state shall pass any law impairing the obligation of contracts puts no limit on any lawful exercise of legitimate governmental power (Legal Tender cases, 12 Wall., 457, 551). The rule alike for state and nation is that private contract rights must yield to the public welfare when the latter is appropriately declared and defined and the two conflict (Manigault v. Springs, 199 U. S., 473, 480; Louisville & Nashville RR. v. Mottley, 219 U. S., 467, 86; Producers Transp. Co. v. RR. Comm., supra; Atlantic Coast Line RR. v. City of Goldsboro, 232 U. S., 548, 558; Union Dry Goods Co. v. Georgia P. S. Corp'n, 248 U. S., 372, 375). But if the law is "arbitrary, unreasonable and not designed to accomplish a legitimate public purpose" (Mutual Loan Co. v. Martell, 222 U. S., 225, 234) the courts will declare it invalid.

But it is contended that the only laws which may be said to impair the obligation of contracts which have been upheld are those in which the United States, which is not included within the constitutional prohibition, has acted (Sinking Fund cases, 99 U. S., 700, 718) to assert its limited but unquestioned sovereignty, as in the Legal Tender cases to regulate the currency, and in the Mottley case (supra) to make illegal all discriminatory rates of interstate carriers; or where the state has acted to regulate public utilities as in the Producers' case (supra) to subject contracts for future transportation by common carriers to regulation; or in cases where the effect of laws prohibiting the sale of liquor or narcotics or the conducting of lotteries and the like, for the public good, was indirectly to affect the contract (Beer Co. v. Mass., 97 U. S., 25, 32); or in which the state

statute which fixed an eight-hour day and the prevailing rate of wages for employees of municipal contractors; and on the Workmen's Compensation Law (People ex rel. Rodgers v. Coler, 166 N. Y., 1; N. Y. Const., art. 12, sec. 13; Ives v. South Buffalo R'y, 201 N. Y., 271; N. Y. Const., art. 1, sec. 19). Each of the latter laws was also approved by the Supreme Court of the United States (Atkin v. Kansas, 191 U. S., 207; N. Y. Central RR. v. White, 243 U. S., 188). The reaction on the courts is that a strong opinion, in any real or fancied public need has been suggested as the sufficient test (Noble State Bank v. Haskell, supra). But constitutional limitations on the power of government are self-imposed restrictions upon the will of the people and qualify the despotism of the majority. Such limitations do not yield to strong opinions merely. They are incorporated in the fundamental law to restrict power. They forbid government to take from the owner without compensation whatever private right to control the use of his property the many may earnestly desire to deprive him of. Isolated expressions of the courts may suggest that whatever the Legislature enact on grounds of public policy should be sustained, but the courts may not uphold the exercise of unconstitutional and arbitrary power. What is arbitrary and what is beneficent must be decided by common sense applied to a concrete set of facts. To uphold private contracts and to enforce their obligations is a matter of high public consequence, but the Legislature has a wide latitude in doing what seems in accordance with sound judgment and reasonableness in order to bring about a great good to a large class of citizens, even at some sacrifice of private rights.

Curative action is needed. While some may question whether it may be said without exaggeration that these enactments promote the public health or morals or safety, they do in a measurable degree promote the convenience of many, which is the public convenience, and the public welfare and advantage in the face of the extraordinary and unforeseen public exigency which the Legislature has, on sufficient evidence, found to exist.

The conclusion is, in the light of present theories of the police power, that the state may regulate a business, however honest in itself, if it is or may become an instrument of widespread oppression (People v. Beakes Dairy Co., supra, and cases cited; Payne v. Kansas, 248 U. S., 112); that the business of renting homes in the City of New York is emergently such an instrument and has therefore become subject to control by the public for the common good; that the regulation of rents and the suspension of possessory remedies so far tend to accomplish the purpose as to supervene the constitutional inhibitions relied upon to defeat the laws before us (Brown Holding Co. v. Feldman, — Fed. Rep., —).

The order appealed from should be affirmed, with costs.

HISCOCK, Ch.J.; HOGAN, CARDOZO and ANDREWS, JJ., concur; CRANE, J., concurs in result on opinion in Guttag v. Shatzkin, decided herewith; McLAUGHLIN, J., dissents on dissenting opinion in

things and regulated not merely the fighting forces, but nearly all economic activities. The railroads and telegraphs were taken over and intrastate rates established (Northern Pacific R'y v. North Dakota, 250 U. S., 135; Dakota Central Tel. Co. v. South Dakota, 250 U. S., 163). The maximum price of coal was fixed and the sale and distribution of food products controlled (United States v. Comm. Central Coal Co., 256 Fed. Rep., 703). No surprise was shown when buildings were taken for government war agencies at a reasonable price, which of necessity meant the price the government was willing to pay. Necessity commandeered buildings for a fair return. The complete and undivided character of the war power of the United States is not disputable (Northern Pacific R'y v. North Dakota, supra) and is not confined to actual hostilities, for it carries with it inherently the power to guard against the immediate renewal of the conflict or *to remedy the evils which have arisen from its rise and progress* (Hamilton v. Kentucky Distilleries & W. Co., 251 U. S., 146, 161).

The provision of the Federal Control Act (40 Stat., 458, sec. 14) that the United States may retain its possession of the railroads until eighteen months after the ratification of peace is an instance where the war powers were continued to enable readjustment and prevent disaster. And yet the war power affects contracts and property rights.

While the states are subject to the contract clause of section 10, article 1, and section 1, article 14, of the United States Constitution, the police power of the states may affect contracts and modify property rights without violation of these provisions. Conceding the health, safety and morals of its citizens to be involved and the circumstances to justify a proper interference by the state, neither the contract nor due process of law clause stand in the way (Union Dry Goods Co. v. Georgia Public Service Corp'n, 248 U. S., 372). These sections of our federal constitution and the police power of the states harmonize and never conflict. The only question here is one of fact, not one of law; do the facts call into existence the power reserved to the states to legislate for the safety and health of the people? Within its sphere the police power of the states is not unlike the war power of the nation. Both are rules of necessity, impliedly or expressly existing in every form of government, the one to preserve the health and morals of a community, the other to preserve sovereignty.

When, therefore, by reason of disordered conditions due to war and the federal war powers, the people of New York City could find no other homes than those they possessed, and were threatened with ejectment or dispossess except upon payment of exorbitant rents, the State Legislature had the power to stay any and all proceedings for a reasonable time—that is while the danger or peril lasted, and until readjustment took place, the owner receiving fair compensation meanwhile.

This is not a case, in my judgment, where the Legislature has undertaken to regulate housing rates because such a business has become charged with a pub-

unable to secure any suitable or similar apartment, owing to the scarcity of such apartments"; "that solely by means of such threats and coercion and duress the plaintiff induced defendant to sign the alleged renewal of lease above mentioned providing for such increased rental," and that defendant had tendered and offered to pay the rent for the month of October, 1920, to the extent of $120.83, which was the monthly installment paid for said premise; for the month of September, 1920. The second affirmative defense realleged the facts set forth in the first, and in addition thereto alleged that the rent reserved in the instrument purporting to be the renewal lease and claimed by plaintiff for the month of October, 1920, was "unjust, unreasonable and oppressive."

The judgment demanded was that the alleged renewal lease be "rescinded, vacated and set aside," and that the complaint be dismissed.

After issue had been joined plaintiff moved, under section 547 of the Code of Civil Procedure, for judgment on the pleadings. The motion was denied, an appeal taken to the Appellate Division, where the order was affirmed, two of the justices dissenting, and leave given to appeal to this court, certifying certain questions. Two of the questions certified were whether the affirmative defenses constituted a defense to the plaintiff's claim, and the others whether chapter 944 of the Laws of 1920 were constitutional.

The facts pleaded in the first affirmative defense were insufficient upon the face thereof, and in this all the members of the court agree. Such facts do not constitute duress, nor do they show that plaintiff was coerced into signing the renewal; on the contrary, they show that defendant voluntarily executed it with full knowledge of its contents. He had been told that unless he renewed the lease at the increased rental he would have to vacate and surrender the premises at the end of the term under which he was then in possession. He states that he relied upon what plaintiff told him and believed it would compel him to vacate the premises unless he executed the renewal. This is precisely what he agreed to do when he executed the lease and what the law obligated him to do. He does not allege as a fact that he had been unable to secure another apartment, or that he had made any effort at all in that direction. He alleges he was fearful plaintiff would terminate the lease, cause him to remove from the premises, and that he would, in that event, be unable to secure a similar apartment owing to the scarcity thereof; in other words, this allegation is based entirely upon what he feared might take place. There is no allegation that he had at any time prior to the commencement of the action claimed that the renewal lease was obtained by duress or that he had attempted to have it rescinded on that account, nor did he offer to rescind; on the contrary, he continued in possession and sought to hold the same under the lease which he claims was obtained by duress. The defense of duress is predicated on the alleged threat of the landlord to exercise his lawful right to regain possession of the premises at the expiration of the term then in force. It never

shall, pending the appeal, deposit with the clerk of the court the amount of the judgment and thereafter, monthly, until the final determination of the appeal, an amount equal to one month's rental, computed on the basis of the judgment (sec. 8). That the act shall not apply to a room or rooms in a hotel containing one hundred and twenty-five rooms or more, or to a lodging or rooming house occupied under a hiring of a week or less (sec. 9). That the act shall not apply to a new building in the course of construction at the time the act takes effect or commenced thereafter, and shall be in force until November 1, 1922.

I agree with the majority of the court that in determining whether or not the act be constitutional it must be considered in connection with chapters 942 and 947, passed at the same extraordinary session of the Legislature. These three acts, with others not here involved, indicate an intent on the part of the Legislature to regulate rents of dwelling until November 1, 1922. Chapter 942 amends certain sections of the Code of Civil Procedure by providing that summary proceedings shall not be maintained by a landlord to recover possession of leased premises until November 1, 1922, unless it be proved that the tenant holding over is objectionable, or the landlord wants to occupy the premises for a dwelling for himself or family, or intends to demolish the building for the purpose of building a new one, or has sold it to a co-operative ownership corporation. Chapter 947 also amends certain sections of the Code of Civil Procedure by prohibiting a landlord from obtaining, during the same period, possession of his premises by an action of ejectment, except in the cases specified in chapter 942. The purpose of chapter 944, when thus read and considered, was to make tenants in possession a preferred class until November 1, 1922, by denying to the landlord until that time the aid of the courts to obtain possession of the premises leased, where the tenant's lease had terminated or he had defaulted in the payment of rent, providing he were willing to pay a reasonable rent, to be determined in a judicial proceeding.

This brings us to the determination of the fundamental question already suggested: Is chapter 944, as applied to leases made prior to its passage, unconstitutional? I am of the opinion that it is. First, it impairs the obligation of a contract, and is thus directly in conflict with the federal constitution (art. 1, sec. 10). The defendant, several months prior to the passage of the act, freely, deliberately and with full knowledge of what he was doing, entered into the renewal lease. But he can violate the agreement, because, according to the act, it is, presumptively, unjust, unreasonable and oppressive. The landlord, however, is bound. He cannot get possession of his property and must accept what the court finds to be the fair rental value. It is the substitution of a new contract which the parties never made, and to the terms of which they never agreed. Such substitution not only impairs the obligation of the contract of renewal, but destroys it, and therefore comes within the constitutional prohibition (Edwards v. Kearzey, 96 U. S., 595;

who sells any kind of property is a vendor of the article sold; all are engaged in a private enterprise. But this does not give the state the right to fix the price at which the sale shall be made, unless it be for the public health, public morals or the general welfare. If it does, there is little if anything left of the constitutional provisions relating to the protection of property and the right to contract with reference to it. The power to fix rental rates between private individuals is not analogous to nor controlled by the decisions which have upheld the power of the Legislature to fix rates for services where the owner has devoted the business affected to a public use.

In Munn v. Illinois (94 U. S., 113) chiefly relied upon by the respondent the owner of a grain elevator had forever devoted it to a public use in handling grain for the public generally. The same principle is applied in German Alliance Insurance Co. v. Lewis (233 U. S., 389); Union Dry Goods Co. v. Georgia Public Service Corp'n (248 U. S., 372). Producers Transp. Co. v. Railroad Comm'n (251 U. S., 228), and other authorities cited by respondent's counsel. The renting of property for housing purposes in the City of New York, as I have already said, is a private business and cannot be made public or impressed with a public interest merely by legislative fiat. Such interest cannot be created in this way or property rights be divested under the guise or pretense of the exercise of the police power. In Producers Transp. Co. v. Railroad Comm'n (supra), Mr. Justice Van Devanter, speaking for the court, said: "It is, of course, true that if the pipe line was constructed solely to carry oil for particular producers under strictly private contracts and was never devoted by its owner to public use, that is, to carrying for the public, the state could not by mere legislative fiat or by any regulating order of a commission convert it into a public utility or make its owner a common carrier; for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clause of the Fourteenth Amendment" (p. 230).

The police power is not superior to the constitution; on the contrary, it is subject to applicable constitutional limitations (Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U. S., 146).

In Matter of Jacobs (98 N. Y., 98, 108) this court, referring to this power, said: "The limit of the power cannot be accurately defined, and the courts have not been able or willing definitely to circumscribe it. But the power, however broad and extensive, is not above the constitution. When it speaks, its voice must be heeded. It furnishes the supreme law, the guide for the conduct of legislators, judges and private persons, and so far as it imposes restraints, the police power must be exercised in subordination thereto (see, also, Slaughterhouse Cases, 16 Wall., 36, 87).

The statutes regulating interest are not analogous. No one would contend that the Legislature would have power to pass a statute reducing the rate of interest on [illegible] should be allowed to care and shift [illegible] themselves. The state has the same regard for one class as the other. Nor should one landlord be treated differently from another. All in the same class should be treated alike. This is what the State and Federal Constitutions require. These safeguards cannot be overthrown by the exercise of the police power, a power which no one has as yet attempted accurately to define or state just where it commences or ends. It seems to me much better to adhere strictly to the constitution, the anchor of good, safe and sound government, rather than to launch on the sea of paternalism, the results of which cannot be foreseen or even foretold.

[illegible] ascertaining the views above expressed, I vote to reverse the orders of the Appellate Division and Special Term, and grant the motion for judgment on the pleadings.

[illegible]

95 At a Term of the Appellate Division of the Supreme Court Held in and for the First Judicial Department, at the Appellate Division Court House, in the Borough of Manhattan, City of New York, on the 24th day of March, 1921.

Present:

Hon. Victor J. Dowling,
Hon. Frank C. Laughlin,
Hon. Walter Lloyd Smith,
Hon. Edgar S. K. Merrell,
Hon. Samuel Greenbaum,
Justices.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

The above named plaintiff having appealed to the Court of Appeals of the State of New York (pursuant to leave duly granted) from an order of the Appellate Division, First Judicial Department, made and entered on the 24th day of December, 1920, affirming an order of the Special Term of the Supreme Court, entered and filed in the office of the Clerk of the County of New York on the 26th day of November, 1920, denying plaintiff's motion for judgment upon the pleadings, and the order granting said appeal having certified the following questions for review:

First. Is the first alleged affirmative defense pleaded in said answer sufficient in law on the face thereof.

Second. Is the second alleged affirmative defense set forth in the answer sufficient in law upon the face thereof.

96 Third. Is Chapter 944 of the Laws of 1920 a constitutional act.

Fourth. Does Chapter 944 of the Laws of 1920 deprive the plaintiff of his liberty or property without due process of law, in violation of Article I, Section 6 of the New York Constitution, and Section I of the Fourteenth Amendment of the Constitution of the United States.

Fifth. Does Chapter 944 of the Laws of 1920 constitute the taking of private property belonging to the plaintiff for private use without just compensation, in violation of Article I, Section 6 of the New York Constitution.

Sixth. Does Chapter 944 of the Laws of 1920 deny to the plaintiff the equal protection of the law, in violation of the Fourteenth Amendment of the Constitution of the United States.

Seventh. Does Chapter 944 of the Laws of 1920 impair the obligation of the contract between the plaintiff and the defendant, in violation of Article I, Section 10 of the Constitution of the United States;

and the said Court of Appeals having heard argument of said appeal and after due deliberation having ordered and adjudged that the order of the Appellate Division of the Supreme Court, so appealed from, be affirmed with costs and the questions certified answered as follows: Numbers First, Fourth, Fifth, Sixth and Seventh in the negative, and Numbers Second and Third in the affirmative, and directing that the proceedings therein be remitted to this Court, there to be proceeded upon according to law, and the said record of the Court of Appeals and the remittitur having been duly filed in the office of the Clerk of this Court now, on reading and filing
97 the remittitur of the Court of Appeals, and on motion of Messrs. Rose & Paskus, attorneys for the defendant, it is

Ordered that the said order and judgment of the Court of Appeals be and the same hereby are made the order and judgment of this Court, and that the defendant have judgment dismissing the complaint with costs, on the ground that plaintiff cannot recover herein by reason of the provisions of Chapter 944 of the Laws of 1920 of the State of New York.

Form 932*.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

vs.

JEROME SIEGEL, Defendant.

Appellate Division of the Supreme Court, First Judicial Department.

Clerk's Office, New York County.

I, Alfred Wagstaff, Clerk of the Appellate Division of the Supreme Court in the First Judicial Department, do hereby certify that the foregoing copy Order has been compared with the original thereof filed in this office on the 24th day of March, 1921, and that the same is a correct transcript thereof, and of the whole of the said original.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court in the County of New York, this 4th day of April, 1921.

[Seal of the Supreme Court, Appellate Division.]

ALFRED WAGSTAFF,
Clerk.

97½ We hereby approve as to form the foregoing order.

Dated New York, March 23, 1921.

M. S. & I. S. ISAACS,
Attorneys for Plaintiff.
ROSE & PASKUS,
Attorneys for Defendant.
WM. D. GUTHRIE,
JULIUS HENRY COHEN,
Special Deputy Attorneys General.

[Endorsed:] Appellate Div. First Dept. Edgar A. Levy Leasing Co., Inc., Plaintiff, against Jerome Siegel, Defendant. Order. Rose & Paskus, Attorneys for Defendant, 128 Broadway, Borough of Manhattan, New York City. Due service of a copy of the within —— is hereby admitted. Dated New York ——— —, ———. To ——— ———, Attorney for ———.

98 Supreme Court, New York County.

EDGAR A. LEVY LEASING CO., INC., Plaintiff,

against

JEROME SIEGEL, Defendant.

An order in this action denying plaintiff's motion for judgment on the pleadings, having been entered herein in the office of the Clerk of the County of New York, on the 26th day of November, 1920; and the plaintiff having appealed from said order to the Appellate Division of this Court, for the First Department, and the said order having been affirmed in all things by said Appellate Division, and an order of affirmance entered thereon on the 24th day of December, 1920, by which said order was affirmed with Ten ($10) Dollars, costs and disbursements of said appeal; and the plaintiff having appealed therefrom to the Court of Appeals; and the said Court of Appeals having sent its remittitur to said Appellate Division of this Court, filed therein on the 23d day of March, 1921, by which it appears that the said Court of Appeals has affirmed the said order of the Appellate Division and that of the Special Term with costs, and has remitted the record and the proceedings in said Court to the Appellate Division of this Court, there to be proceeded upon according to law; and said Appellate Division having by an order duly entered in the office of the Clerk of the said Appellate Division on the 24" day of March, 1921, ordered that said order and judgment be made the order and judgment of this Court, and directing the entry of judgment
99 dismissing the complaint with costs, on the ground that plaintiff cannot recover herein by reason of the provisions of Chapter 944 of the Laws of 1920 of the State of New York, and the defendant's costs having been taxed at the sum of one

hundred & forty & 29 100 Dollars, now, on motion of Rose & Paskus, attorneys for defendant, it is

Adjudged that the order of the Appellate Division of the Supreme Court, appealed from herein, and that of the Special Term, be and the same hereby are affirmed, and the complaint of the plaintiff be and it is hereby dismissed with costs and that the defendant recover of the plaintiff the sum of one hundred & forty & 29 100 ($140 29) Dollars, his costs as taxed, and that he have execution therefor.

Dated Mch. 26, 1921.

[SEAL.] WILLIAM F. SCHNEIDER,
Clerk.

99½ Endorsed: Supreme Court, N. Y. County. Edgar A. Levy Leasing Co., Inc., Plaintiff, against Jerome Siegel, Defendant. Judgment. Rose & Paskus, Attorneys for Defendant, 128 Broadway, Borough of Manhattan, New York City.

100 Supreme Court of the United States.

EDGAR A. LEVY LEASING CO., INC., Plaintiff in Error,

against

JEROME SIEGEL, Defendant in Error.

Allowance of Writ.

Comes now Edgar A. Levy Leasing Co., Inc., plaintiff in error above named, on this 30 day of March, 1921, and files and presents its petition praying for the allowance of a writ of error intended to be urged by it, and praying further that a duly authenticated transcript of the record, proceedings and papers upon which the judgment herein was rendered may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may be just and proper.

And it appearing upon a consideration of the said petition that in this action there has been drawn in question the validity of a statute of and authority exercised under the State of New York on the ground of their being repugnant to the Constitution of the United States, and that the decision rendered by the Appellate Division of the First Department of the Supreme Court and by the Court of Appeals of the State of New York, the highest courts of said State in which a decision of this cause could be had, was in favor of the validity of a statute of and of an authority exercised under the State of New York.

It is ordered that a writ of error be allowed as prayer: provided, however, that Edgar A. Levy Leasing Co., Inc., the plaintiff in error, give bond according to law in the sum of Two hun-

101 dred and fifty Dollars ($250), which said bond shall operate as a supersedeas bond.

In testimony whereof, witness my hand this 30 day of March, 1921.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

101½ [Endorsed:] United States Supreme Court. Edgar A. Levy Leasing Co., Inc., Plaintiff in Error, against Jerome Siegel, Defendant in Error. Allowance of Writ of Error. Louis Marshall, 120 Broadway, New York City, N. Y. Lewis M. Isaacs, 52 William Street, N. Y. City, N. Y., Attorneys and Counsel for Plaintiff in Error.

102 Supreme Court of the United States.

EDGAR A. LEVY LEASING CO., INC., Plaintiff in Error,

against

JEROME SIEGEL, Defendant in Error.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the State of New York in and for the County of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the State of New York in and for the County of New York after decision rendered in said cause by the Appellate Division of the First Department of the Supreme Court and by the Court of Appeals of said State, they being the highest courts of law or equity of said State in which a decision could be had in an action between Edgar A. Levy Leasing Co., Inc., plaintiff in error, and Jerome Siegel, defendant in error, wherein was drawn in question the validity of a statute of and authority exercised under the State of New York on the ground of their being repugnant to the Constitution of the United States and the decision rendered in said cause was in favor of their validity, and manifest error has happened to the great damage of the said Edgar A. Levy Leasing Co., Inc., as by its petition appears;

We, being willing that error, if any hath happened, shall be at once corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things con-
103 cerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, D. C., within thirty days from the date hereof, that the record and proceedings aforesaid being

inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 30 day of March, in the year of our Lord One thousand nine hundred and twenty-one.

[Seal of the Supreme Court of the United States.]

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

103½ [Endorsed:] United States Supreme Court. Edgar A. Levy Leasing Co., Inc., Plaintiff in Error, against Jerome Siegel, Defendant in Error. Writ of Error. Louis Marshall, 120 Broadway, New York City, N. Y., Lewis M. Isaacs, 52 William Street, N. Y. City, N. Y. Attorneys and Counsel for Plaintiff in Error. Received Apr. 5, 1921. Wm. F. Schneider, Clerk.

104 Supreme Court of the United States.

EDGAR A. LEVY LEASING CO., Inc., Plaintiff in Error,

against

JEROME SIEGEL, Defendant in Error.

Petition for Writ of Error.

Now comes Edgar A. Levy Leasing Co., Inc., by Louis Marshall and Lewis M. Isaacs, its attorneys, and says that on March 26, 1921, the Supreme Court of the State of New York in and for the County of New York made and entered a final judgment herein in favor of Jerome Siegel, the defendant in error above named, whereby it was adjudged that the complaint of the plaintiff in error be dismissed with costs, and that the defendant in error recover of the said plaintiff in error the sum of One hundred and forty and 29/100 Dollars $140.29) as costs, and further says that in said final judgment and the proceedings had in this cause prior thereto certain errors were committed to the prejudice of the plaintiff in error, all of which will more in detail appear from the assignments of error filed with this petition.

This action was brought in the New York Supreme Court for the County of New York. An order was entered at the Special Term of said court on November 26, 1920, denying the motion of the plaintiff in error for judgment. An appeal was thereupon taken

from said order to the Appellate Division of the First Department of the Supreme Court of the State of New York, which on December 21, 1920, affirmed the order of the Special Term of the Supreme Court and certified various questions for review to the Court of Appeals of the State of New York, which is the highest court in said State in which a decision in this cause could be had. Thereafter the said Court of Appeals adjudged that the order of the
1041/2 Appellate Division so appealed from be affirmed, with costs, and answered the questions certified to it, and directed that the proceedings in this cause be remitted to the Appellate Division of the First Department of the Supreme Court there to be proceeded upon according to law. The record of the Court of Appeals and the remittitur from said court having been duly filed with said Appellate Division (where said record now remains) the said Appellate Division thereupon on March 24, 1921, adjudged that the order and judgment of the Court of Appeals be made the order and judgment of said Appellate Division and that the defendant in error have judgment dismissing the complaint with costs. Whereupon such judgment was entered in the office of the Clerk of the Supreme Court in and for the County of New York, on March 26, 1921.

Wherefore your petitioner prays that a writ of error may issue in its behalf from the Supreme Court of the United States to the Supreme Court of the State of New York in and for the County of New York for the correction of the errors and a reversal of the judgment so complained of, that a transcript of the record, proceedings and orders in this cause, only authenticated, be sent to the Supreme Court of the United States, that the amount of the security which the petitioner shall give and furnish on said writ of error may be fixed, and that upon the giving of such security all further proceedings in the Supreme Court of the State of New York be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

Dated, New York, March 28, 1921.

EDGAR A. LEVY LEASING CO., INC.,
By STANLY M. ISAACS, *Treas.*,
Petitioner.

By LOUIS MARSHALL,
LEWIS M. ISAACS,
Its Attorneys and Counsel.

1043/4 [Endorsed:] United States Supreme Court. Edgar A. Levy Leasing Co., Inc., Plaintiff in Error, against Jerome Siegel, Defendant in Error. Petition for Writ of Error. Louis Marshall, 120 Broadway, New York City, N. Y., Lewis M. Isaacs, 52 William Street, N. Y. City, N. Y., Attorneys and Counsel for Plaintiff in Error.

105 Supreme Court of the United States.

No. 853, October Term, 1920.

EDGAR A. LEVY LEASING CO., INC., Plaintiff in Error,

against

JEROME SIEGEL, Defendant in Error.

Assignments of Error.

Now comes Edgar A. Levy Leasing Co., Inc., plaintiff in error in the above entitled cause, by Louis Marshall and Lewis M. Isaacs, its attorneys, and says that in the record and proceedings in this cause there is manifest error in this, to wit:

First. In that the Appellate Division of the First Department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in adjudging that Chapter 944 of the Laws of 1920 of the State of New York is a constitutional act.

Second. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in adjudging that chapter 944 of the Laws of 1920 of the State of New York did not deprive the plaintiff in error of its liberty without due process of law, in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States.

Third. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in adjudging that chapter 944 of the Laws of 1920 of the State of New York did not deprive the plaintiff in error of its property without due process of law, in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States.

106 Fourth. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in adjudging that chapter 944 of the Laws of 1920 of the State of New York did not deny to the plaintiff in error the equal protection of the law in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States.

Fifth. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in adjudging that chapter 944 of the Laws of 1920 of the State of New York did not impair the obligation of the contract between the plaintiff in error and the defendant in error in violation of Article I, section 10, of the Constitution of the United States.

Sixth. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in adjudging that chapter 944 of the Laws of 1920 of the State of New York did not take the private property of the plaintiff in error for the private use of the defendant in error without due process of law in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States.

Seventh. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in failing to adjudge that chapter 944 of the Laws of 1920 of the State of New York deprived the plaintiff in error of its liberty and propert without due process of law and denied to it the equal protection of the laws in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States.

107 Eighth. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in refusing to adjudge that chapter 944 of the Laws of 1920 of the State of New York impaired the obligation of the contract which the defendant in error entered into with the plaintiff in error, to wit, the lease dated May 3, 1920, referred to in the complaint herein, and thereby violated the provisions of Article I, section 10, of the Constitution of the United States.

Ninth. In that the Appellate Division of the first department of the Supreme Court of the State of New York and the Court of Appeals of said State erred in refusing to render judgment in favor of the plaintiff in error on the pleadings herein on the ground that chapter 944 of the Laws of 1920 of the State of New York was unconstitutional and void, because it deprived the plaintiff in error of its liberty and property without due process of law in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States, because it constitued the taking of private property belonging to the plaintiff in error for private use without just compensation in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States, because it denied the plaintiff in error the equal protection of the laws in violation of section 1 of the Fourteenth Amendment to the Constitution of the United States, and because it impaired the obligation of the contract entered into between the plaintiff in error and the defendant in error in violation of Article I, section 10, of the Constitution of the United States.

Wherefore, for these and other manifest errors appearing in the record, Edgar A. Levy Leasing Co., Inc., the plaintiff in error, prays
108 that the judgment entered in the Supreme Court of the State of New York in and for the County of New York be reversed and set aside and held for naught, and that judgment be rendered for the plaintiff in error herein granting to it its rights

under the laws and Constitution of the United States, and particularly judgment for the relief demanded in its complaint in this cause.

LOUIS MARSHALL,
120 Broadway, New York City, New York.
LEWIS M. ISAACS,
52 William Street, New York City, New York.
Attorneys and Counsel for Plaintiff in Error.

108½ [Endorsed:] United States Supreme Court. Edgar A. Levy Leasing Co., Inc., Plaintiff in Error, against Jerome Siegel, Defendant in Error. Assignments of Error. Louis Marshall, 120 Broadway, New York City, N. Y., Lewis M. Isaacs, 52 William Street, N. Y. City, N. Y., Attorneys and Counsel for Plaintiff in Error.

109 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Jerome Siegel and the Attorney General of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of New York in and for the County of New York, wherein Edgar A. Levy Leasing Co., Inc. is plaintiff in error and you the said Jerome Siegel are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Louis D. Brandeis, Associate Justice of the Supreme Court of the United States, this 30 day of March, in the year of our Lord One thousand nine hundred and twenty-one.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

109½ [Endorsed:] United States Supreme Court. Edgar A. Levy Leasing Co., Inc., Plaintiff in Error, against Jerome Siegel, Defendant in Error. Citation. Louis Marshall, 120 Broadway, New York City, N. Y., Lewis M. Isaacs, 52 William Street, N. Y. City, N. Y., Attorneys and Counsel for Plaintiff in Error.

10 Supreme Court of the United States.

EDGAR A. LEVY LEASING CO., INC., Plaintiff in Error,

against

JEROME SIEGEL, Defendant in Error.

Bond on Writ of Error.

Know all men by these presents, that we Edgar A. Levy Leasing Co., Inc., plaintiff in error, as Principal, and the United States Fidelity and Guaranty — , as surety, are held and firmly bound unto Jerome Siegel in the full sum of Two hundred and fifty dollars ($250), to be paid to said Jerome Siegel, and for the payment of which well and truly to be made we bind ourselves and each of us and each of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 29th day of March, 1921.

Whereas the above named Edgar A. Levy Leasing Co., Inc., plaintiff in error, seeks to prosecute its writ of error in the Supreme Court of the United States to reverse the judgment rendered in the action entitled "Edgar A. Levy Leasing Co., Inc. against Jerome Siegel" by the Supreme Court of the State of New York in and for the County of New York on March 26, 1921;

Now, therefore, the condition of the above obligation is such that if the above named plaintiff in error shall prosecute its writ of error to effect and shall answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and virtue.

11

EDGAR A. LEVY LEASING CO., INC.,
By STANLY M. ISAACS,
Treas.,
UNITED STATES FIDELITY AND GUARANTY COMPANY,
By S. FRANK HEDGES,
Attorney-in-Fact.

Attest:

[Seal of United States Fidelity & Guaranty Co., N. Y., Incorporated, 1896.]

ADOLPHUS A. JACKSON,
Attorney-in-Fact.

This bond is approved this 30 day of March, 1921.

LOUIS D. BRANDEIS,
Associate Justice of the Supreme Court of the United States.

112 *Affidavit, Acknowledgment, and Justification by the United States Fidelity and Guaranty Company.*

We Will Bond you.

Fidelity, Judicial, Casualty Contract.

STATE OF NEW YORK,
County of New York, ss:

Before me personally came S. Frank Hedges, known to me to be — of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of Edgar A. Levy Leasing Co., Inc., as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, State of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds; that the seal affixed to *he* annexed bond of Edgar A. Levy Leasing Co., Inc., is the corporate seal of the said United States Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as Attorney-in-fact of said Company; and that he is acquainted with Adolphus A. Jackson and knows him to be Attorney-in-fact of said Company, and that the signature of said Adolphus A. Jackson subscribed to said bond is the genuine handwriting of said Adolphus A. Jackson and was thereto subscribed by order of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars ($2,000,000.00).

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 29th day of March, 1921.

[Seal of J. W. Miller, Notary Public, New York County.]

J. W. MILLER,
Notary Public, New York County, No. 380.

Register No. 2323.
Certificate filed in Kings County No. 138; Register No. 2173.
Bronx County No. 25; Register No. 2266.
Queens County No. 1975.
Putnam, Westchester, Orange, Suffolk, Nassau, Richmond, Rockland.

Term Expires March 30th, 1922.

[Endorsed:] United States Supreme Court. Edgar A. Levy Leasing Co., Inc., Plaintiff in Error, against Jerome el, Defendant in Error. Bond on Writ of Error. Louis shall, 120 Broadway, New York City, N. Y., Lewis M. Isaacs, William Street, N. Y. City, N. Y., Attorneys and Counsel for ntiff in Error.

Supreme Court of the United States.

EDGAR A. LEVY LEASING CO., INC., Plaintiff-in-Error,

against

JEROME SIEGEL, Defendant-in-Error.

The undersigned hereby admit due, timely and proper service the annexed petition for writ of certiorari, assignments of error, nd on writ of error, allowance of writ, writ of error and citation, in above entitled action.

Dated New York, March 31, 1921.

ROSE & PASKUS,
Attorneys for Defendant-in-Error, Jerome Siegel.
CHARLES D. NEWTON,
Attorney General, State of New York.

Supreme Court of the United States.

EDGAR A. LEVY LEASING CO., INC., Plaintiff-in-Error,

against

JEROME SIEGEL, Defendant-in-Error.

The undersigned hereby admit due, timely and proper service of e annexed petition for writ of certiorari, assignments of error, nd on writ of error, allowance of writ, writ of error and citation, the above entitled action.

Dated New York, March 31, 1921.

ROSE & PASKUS,
Attorneys for Defendant-in-Error, Jerome Siegel.
CHARLES D. NEWTON,
Attorney General, State of New York.

STATE OF NEW YORK,
County of New York, ss:

erk's Office of the Supreme Court of the State of New York for the County of New York.

I, William F. Schneider, Clerk of the County of New York and of e Supreme Court of the State of New York for the said County

of New York, by virtue of the annexed Writ of Error which was served upon me on the 5 day of April 1921, and in obedience thereto, do hereby certify that the foregoing pages numbered from 1 to 114 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the suit, Edgar A. Levy Leasing Co., Inc., Plaintiff-Appellant, against Jerome Siegel, Defendant-Respondent, mentioned in said Writ of Error, as the same remain of record and on file in my office;

And that annexed hereto is the Petition for the said Writ of Error, the Assignment of Errors and Prayer for Reversal Bond on Reversal, the Citation to the Defendants in error with admission of service of the same and said Writ of Error served upon me.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed and have hereunto set my hand, at my office in the City and County of New York the 6th day of April, 1921.

[New York Seal.]

WM. F. SCHNEIDER,
Clerk.

Endorsed on cover: File No. 28,210. New York Supreme Court. Term No. 285. Edgar A. Levy Leasing Company, Inc., plaintiff in error, vs. Jerome Siegel. Filed April 7th, 1921. File No. 28,210.